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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.  
Plaintiff,

Case No. 1:19-cr-227  
1:23-cr-37  
(LJV)

PETER GERACE, JR.,

December 19, 2024

Defendant.

TRANSCRIPT OF JURY TRIAL - CLOSING STATEMENTS  
BEFORE THE HONORABLE LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE

APPEARANCES: TRINI E. ROSS, UNITED STATES ATTORNEY  
BY: JOSEPH M. TRIPPI, ESQ.

NICHOLAS T. COOPER, ESQ.  
CASEY L. CHALBECK, ESQ.

Assistant United States Attorneys  
Federal Centre, 138 Delaware Avenue  
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For the Plaintiff

THE FOTI LAW FIRM, P.C.

BY: MARK ANDREW FOTI, ESQ.  
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And

SOEHNLEIN LAW

BY: ERIC MICHAEL SOEHNLEIN, ESQ.  
350 Main Street, Suite 2100  
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For the Defendant

PRESENT: KAREN A. CHAMPOUX, USA PARALEGAL  
BRIAN A. BURNS, FBI SPECIAL AGENT  
MARILYN K. HALLIDAY, HSI SPECIAL AGENT  
OLIVIA A. PROIA, J.D., PARALEGAL

LAW CLERK: REBECCA FABIAN IZZO, ESQ.

COURT CLERK: COLLEEN M. DEMMA

REPORTER: ANN MEISSNER SAWYER, FCRR, RPR, CRR  
Robert H. Jackson Courthouse  
2 Niagara Square Buffalo, New York 14202  
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09:07AM 1 (Proceedings commenced at 9:07 a.m.)

09:07AM 2 (Jury not present.)

09:07AM 3 **THE CLERK:** All rise. United States District Court  
09:07AM 4 for the Western District of New York is now in session, the  
09:07AM 5 Honorable Lawrence J. Vilardo presiding.

09:07AM 6 **THE COURT:** Please be seated.

09:07AM 7 **THE CLERK:** 19-cr-227 and 23-cr-37, United States of  
09:07AM 8 America versus Peter Gerace Jr.

09:07AM 9 Assistant United States Attorneys Joseph Tripi, and  
09:07AM 10 Nicholas Cooper, and Casey Chalbeck who is appearing by  
09:07AM 11 teleconference, and paralegal Karen Champoux, appearing on  
09:07AM 12 behalf of the government.

09:07AM 13 Also present is FBI Special Agent Brian Burns, and  
09:08AM 14 HSI Special Agent Marilyn Halliday.

09:08AM 15 Attorneys Mark Foti and Eric Soehnlein, and paralegal  
09:08AM 16 Olivia Proia, appearing with defendant. Defendant is present.

09:08AM 17 This is the date set for the continuation of a jury  
09:08AM 18 trial.

09:08AM 19 **THE COURT:** Okay. Anything we need to do before we  
09:08AM 20 bring the jury in?

09:08AM 21 **MR. COOPER:** I guess I just wanted to ask if the  
09:08AM 22 Court has changed its mind with respect to the fear of severe  
09:08AM 23 withdrawal system instruction?

09:08AM 24 **THE COURT:** I have not.

09:08AM 25 **MR. COOPER:** Okay.

09:08AM 1           **THE COURT:** Yet, I -- I --

09:08AM 2           **MR. COOPER:** So then I -- I want to sum accordingly,

09:08AM 3 that's why I'm asking.

09:08AM 4           **THE COURT:** Yeah, yeah. Okay. Anything else?

09:08AM 5           **MR. COOPER:** No.

09:08AM 6           **THE COURT:** Anything else from the defense?

09:08AM 7           **MR. FOTI:** No, Judge.

09:08AM 8           **THE COURT:** Okay. So, if you want to take a break at

09:08AM 9 some -- I'll give you three hours for this or, you know --

09:08AM 10          **MR. COOPER:** Thereabouts.

09:08AM 11          **THE COURT:** -- as much, yeah, as much as you take.

09:08AM 12 If you want to break, you let me know. Otherwise, we'll go

09:08AM 13 right through.

09:08AM 14          **MR. COOPER:** I appreciate it. I have a point in

09:08AM 15 there that's probably a little tiny bit past halfway where I

09:08AM 16 think it would make sense to break, because I move from one

09:08AM 17 section to another, so I'll flag that for you when I get

09:09AM 18 there.

09:09AM 19          **THE COURT:** That's up to you. And if you don't want

09:09AM 20 to break, if you feel like you're rolling along and you don't

09:09AM 21 want to break, you can go through it. Otherwise, just let me

09:09AM 22 know, Judge, this would be a good time for a break.

09:09AM 23          **MR. COOPER:** Got it. That's gonna happen.

09:09AM 24          **THE COURT:** Okay. Let's bring them in, please, Pat.

09:11AM 25           (Jury seated at 9:11 a.m.)

09:11AM 1           **THE COURT:** Good morning, everyone.

09:11AM 2           **THE JURORS:** Good morning.

09:11AM 3           **THE COURT:** The record will reflect that all our

09:11AM 4 jurors are present. And we're going to begin the summations

09:11AM 5 now.

09:11AM 6           Mr. Cooper will sum up. We'll take a relatively

09:11AM 7 short lunch, and then the defense will sum up. And the

09:12AM 8 government has an opportunity to give a rebuttal after that.

09:12AM 9 Okay?

09:12AM 10 So, Mr. Cooper, the floor is yours.

09:12AM 11           **MR. COOPER:** Thanks, Judge.

09:12AM 12 Choices. This case is about choices, yeah. Let's

09:12AM 13 talk about the choices that this defendant made. The choices

09:12AM 14 that Peter Gerace made in his pursuit of money, in his pursuit

09:12AM 15 of power, and in his pursuit of his own sexual gratification

09:12AM 16 and the sexual gratification of others.

09:12AM 17 We can start with money.

09:12AM 18 The defendant set up Pharaoh's Gentlemen's Club as a

09:12AM 19 drug-involved premises. That was his business model.

09:12AM 20 Your screens aren't working?

09:13AM 21           **THE JURORS:** This one, and that one.

09:13AM 22           **THE COURT:** Mine is not either.

09:13AM 23           **MR. COOPER:** We paused the timer, Judge.

09:13AM 24           **THE JURORS:** Okay. We're good.

09:13AM 25           **MR. COOPER:** Everybody good? All right.

09:13AM 1 May I proceed, Your Honor?

09:13AM 2 **THE COURT:** Yep. Of course.

09:13AM 3 **MR. COOPER:** Thank you. No, that's okay.

09:13AM 4 All right. He set up Pharaoh's as a drug-involved  
09:13AM 5 premises, and that was part of the business model. It's how  
09:13AM 6 the club was designed to function. That was on purpose. This  
09:13AM 7 defendant set up Pharaoh's Gentlemen's Club to fuel the  
09:13AM 8 addictions of drug-addicted dancers, and he did that to keep  
09:13AM 9 them on the floor, to keep them dancing, to keep them walking  
09:13AM 10 into the VIP Room with whales like Wayne VanVleet and  
09:13AM 11 countless other customers. And he did that for a reason,  
09:13AM 12 because it filled his pockets with money.

09:13AM 13 Every single one of those dances that happened in the  
09:13AM 14 VIP area, they only happened when the dancers had the drugs  
09:13AM 15 that they need, so it's part of the business model.

09:14AM 16 He set up the club to supply customers with cocaine  
09:14AM 17 because the more cocaine customers have access to, the more  
09:14AM 18 cocaine they use, the more alcohol they drink which makes him  
09:14AM 19 money, the more VIP dances they go and engage in which makes  
09:14AM 20 him money, so it's part of the business model. It's woven  
09:14AM 21 into the fabric of his club.

09:14AM 22 These crimes brought the defendant power, and you  
09:14AM 23 learned about that. When you make a place like the upstairs  
09:14AM 24 at Pharaoh's where important people, or people you think are  
09:14AM 25 important, can go and snort cocaine without consequences, it

09:14AM 1 gives you access to power. And we're going to talk in detail  
09:14AM 2 about it, but think about Judge John Michalski who went  
09:14AM 3 upstairs with dancers that this defendant provided, and then  
09:14AM 4 forged documents for him. And who happened to be the judge  
09:14AM 5 that was deciding a protective order on controlled purchases  
09:14AM 6 of drugs from his club?

09:14AM 7 That's power. That's access to power that this  
09:15AM 8 defendant had because of the way he ran his business, his  
09:15AM 9 club.

09:15AM 10 And sexual gratification. You probably heard more  
09:15AM 11 about that than you wanted to during the course of this trial.  
09:15AM 12 You heard testimony from witness after witness about how this  
09:15AM 13 business, his business, was set up to gratify the sexual  
09:15AM 14 desires of not just himself, but others.

09:15AM 15 The defendant, by setting himself up as a source of  
09:15AM 16 supply for cocaine and highly addictive opiates like Lortabs  
09:15AM 17 and other drugs, he made himself in a position of power to  
09:15AM 18 demand sex from women that were heavily addicted to those  
09:15AM 19 drugs, whenever he wanted it.

09:15AM 20 But it wasn't just his own sexual with gratification.  
09:15AM 21 The business was set up to cater to the sexual gratification  
09:15AM 22 of his friends, like Aaron LaMarca the liquor distributor who  
09:15AM 23 would go upstairs and have sex with drug addicts that this  
09:15AM 24 defendant set him up with; like his brother, David; like other  
09:16AM 25 people; Judge Michalski going upstairs with Shelby, his

09:16AM 1 drug-addicted employee. He set it up to function that way.

09:16AM 2 And then you have the downstairs VIP area, part of  
09:16AM 3 the business model. People are looking the other way at his  
09:16AM 4 direction. I suggest to you you're gonna hear a lot about  
09:16AM 5 this when the defendant tells L.L., go in the back with Wayne,  
09:16AM 6 he's gonna stick his fingers in you, but he'll tip you extra,  
09:16AM 7 and Brian will look the other way. That was this defendant  
09:16AM 8 describing how he set up his business so that he could fill  
09:16AM 9 his pockets with money.

09:16AM 10 His lawyers told you on their opening statement this  
09:16AM 11 case was about choices. I agree. This case is about the  
09:16AM 12 choices that Peter Gerace made to get what he wanted: Money,  
09:16AM 13 power, and sexual gratification.

09:16AM 14 You listened to the witnesses like L.L. who testified  
09:16AM 15 just last week into this week. Witnesses like K.L., P.H.,  
09:17AM 16 K.A., and you learned about the wreckage that was left in the  
09:17AM 17 wake of the choices that this defendant made so he could  
09:17AM 18 pursue the things he wanted, like money, and power, and sexual  
09:17AM 19 gratification.

09:17AM 20 It feels like a very long time ago, but during jury  
09:17AM 21 selection each of you were selected basically to do a job in  
09:17AM 22 service of the country. You were picked to come here, listen  
09:17AM 23 to testimony of witnesses from that stand, review evidence,  
09:17AM 24 listen to the law, apply the facts as you determine them to  
09:17AM 25 the law as Judge Vilardo instructs it to you, and return a

09:17AM 1 just verdict. That's your job. So let's get to work.

09:17AM 2 There are four main boxes of proof in this case, four  
09:17AM 3 different categories, and I'm going to try to separate it that  
09:17AM 4 way so that we can go through it in an organized fashion.

09:17AM 5 The first category of proof in this case is  
09:17AM 6 drug-trafficking proof. And there's two counts in the  
09:18AM 7 indictment that represent that category of proof. So Count 3  
09:18AM 8 in the indictment charges the defendant with maintaining a  
09:18AM 9 drug-involved premises, and Count 4 charges the defendant with  
09:18AM 10 conspiring to possess with intent to distribute and to  
09:18AM 11 distribute drugs. Those are the two drug-trafficking counts.

09:18AM 12 The second box is sex trafficking. And that's  
09:18AM 13 represented in the indictment in Count 5, conspiracy to commit  
09:18AM 14 sex trafficking. And we'll talk more in detail about it in a  
09:18AM 15 little bit.

09:18AM 16 The third category, as you know, is public  
09:18AM 17 corruption. Count 1 charges this defendant in a conspiracy  
09:18AM 18 with Joseph Bongiovanni to defraud the United States, to  
09:18AM 19 deprive the DEA of the work that Joe Bongiovanni owed them  
09:18AM 20 essentially.

09:18AM 21 The -- the second count in that public corruption  
09:18AM 22 category is Count 2, and that's paying a bribe to a public  
09:18AM 23 official. Those are two separate charges. We'll cover the  
09:19AM 24 differences when we get there.

09:19AM 25 The final category is witness tampering. You learned

09:19AM 1 about P.H., you heard from her, and you heard from others  
09:19AM 2 about what happened on November 19th, 2019, when the  
09:19AM 3 defendant, Crystal Quinn, and C.C., were snorting cocaine  
09:19AM 4 together in his basement, attempting to prevent P.H. from  
09:19AM 5 continuing to cooperate, sending messages trying to stop her  
09:19AM 6 from ever getting in that chair. That's the fourth category  
09:19AM 7 of proof that we'll discuss.

09:19AM 8 We'll break it down, we'll go one at a time. And I'm  
09:19AM 9 going to talk with you about what the elements of each of  
09:19AM 10 those crimes are, and then I'm going to talk with you about  
09:19AM 11 specific pieces of credible testimony and credible evidence  
09:19AM 12 that support you returning a verdict of guilty on each of  
09:19AM 13 those crimes. We'll hit every element, work through it  
09:19AM 14 very -- in a very structured fashion.

09:19AM 15 And make no mistake about it, evidence includes  
09:20AM 16 testimony from the witness stand. Evidence doesn't have to be  
09:20AM 17 physical boxes and pieces of paper. When a person comes in  
09:20AM 18 and swears an oath to tell the truth, and they talk with you  
09:20AM 19 about things they observed, things they experienced, things  
09:20AM 20 that happened to their bodies, that's evidence for you to  
09:20AM 21 consider.

09:20AM 22 We're going to start with that first category,  
09:20AM 23 though. Let's start with drug trafficking, and we're going to  
09:20AM 24 start with Count 3, maintaining a drug-involved premises.

09:20AM 25 The indictment alleges that the defendant maintained

09:20AM 1 Pharaoh's as a drug-involved premises between about 2006 and  
09:20AM 2 December 12th, 2019.

09:20AM 3 That crime has three elements. The first is that the  
09:20AM 4 defendant permanently or temporarily used or maintained  
09:20AM 5 Pharaoh's Gentlemen's Club;

09:20AM 6 Second, the defendant maintained that place for the  
09:21AM 7 purpose of distributing and using controlled substances,  
09:21AM 8 drugs; and

09:21AM 9 Third, that the defendant acted knowingly.

09:21AM 10 Those are the three elements, and the judge will give  
09:21AM 11 you more detailed instructions later.

09:21AM 12 One note on distribution, though. You heard us ask  
09:21AM 13 witnesses this, we talked about it. Distribution doesn't  
09:21AM 14 require a sale. Giving someone drugs and getting nothing in  
09:21AM 15 return, distribution.

09:21AM 16 Causing another person to give someone drugs. If I  
09:21AM 17 give Joe drugs and say, hey, go give them to Karen, that's a  
09:21AM 18 distribution from me.

09:21AM 19 So distribution does not equate to sale, and I'd like  
09:21AM 20 for you to keep that in mind as we talk through this here.

09:21AM 21 We'll start with the first element. It's been  
09:21AM 22 established at this trial over and over and over again that  
09:21AM 23 the defendant maintained Pharaoh's Gentlemen's Club. We  
09:21AM 24 called, I think, 45 witnesses in the government's case, and I  
09:21AM 25 would suggest to you that I'm sure 30 of them discussed the

09:21AM 1 defendant being the owner of Pharaoh's. So we're going to  
09:22AM 2 move through it, but we're not going to spend too much time in  
09:22AM 3 that element.

09:22AM 4 I think when the judge instructs you on the law,  
09:22AM 5 you're gonna hear him say it's not our burden to prove to you  
09:22AM 6 that the defendant was the on-paper owner. I suggest to you  
09:22AM 7 that's not what the law means when it says maintained a place.  
09:22AM 8 And I expect you're gonna hear the judge say did the defendant  
09:22AM 9 exercise significant supervisory control over the place, over  
09:22AM 10 the activities that occurred there, for a period of time. And  
09:22AM 11 let's think about what we learned in this case.

09:22AM 12 First of all, you can start with the 2009 probation  
09:22AM 13 search as a -- kind of a lay-up of an example. Probation goes  
09:22AM 14 there at like 8 in the morning before the business is open,  
09:22AM 15 and who's there? The defendant. That's evidence that the  
09:22AM 16 defendant maintained the place, certainly wasn't a customer, a  
09:22AM 17 low-level employee. He was essentially there -- or, I suggest  
09:22AM 18 the evidence shows you he was there overnight.

09:22AM 19 Witness after witness got on that stand and told you  
09:22AM 20 Peter Gerace was the owner of Pharaoh's Gentlemen's Club.

09:23AM 21 You heard witnesses testify about his ability to hire  
09:23AM 22 people. You heard witnesses testify about his ability to fire  
09:23AM 23 people. That's significant supervisory control.

09:23AM 24 At the end of this case, after six weeks, there  
09:23AM 25 should be no doubt left in your mind at all, let alone a

09:23AM 1 reasonable doubt, that the defendant maintained Pharaoh's  
09:23AM 2 between '06 and '19.

09:23AM 3 And, by the way, when the judge instructs you on the  
09:23AM 4 law, I expect you're not gonna hear him say he had to be in  
09:23AM 5 complete control of that place every single day between 2006  
09:23AM 6 and 2019. That's not required under the law. I want you to  
09:23AM 7 pay close attention to what the judge discusses with you about  
09:23AM 8 that.

09:23AM 9 You know from listening to the testimony of witnesses  
09:23AM 10 throughout the course of this trial that for the vast majority  
09:23AM 11 of time between 2006 and 2019, this defendant controlled  
09:23AM 12 Pharaoh's Gentlemen's Club.

09:23AM 13 Let's move on to the second element, that Pharaoh's  
09:24AM 14 was maintained for the purpose of using and distributing  
09:24AM 15 controlled substances. That's also been proven to you beyond  
09:24AM 16 a reasonable doubt.

09:24AM 17 I expect that that -- that the judge is going to tell  
09:24AM 18 you that that element doesn't require that we prove to you  
09:24AM 19 that using or dealing controlled substances was the only  
09:24AM 20 purpose that the defendant maintained the club. I expect that  
09:24AM 21 the judge is going to tell you that we have to prove that the  
09:24AM 22 drug activity was a significant or important reason why the  
09:24AM 23 defendant maintained the place. You know it was.

09:24AM 24 There's several reasons why you know that drug  
09:24AM 25 activity, using and distributing drugs at Pharaoh's, was a

09:24AM 1 significant and important reason why he maintained that place.

09:24AM 2 The first one's obvious. The more money the club  
09:24AM 3 made, the more money he made. He's the owner. Common sense,  
09:25AM 4 not rocket science.

09:25AM 5 You heard testimony from numerous witnesses that  
09:25AM 6 selling alcohol made the club money, which means it made him  
09:25AM 7 money, and that the more cocaine people use, the more they're  
09:25AM 8 able to drink. So that's a part of the business model that  
09:25AM 9 this defendant set up, and we're going to get into detail  
09:25AM 10 about how he directed cocaine to be distributed in a little  
09:25AM 11 while. But the more cocaine there was flowing through the  
09:25AM 12 club, the more alcohol is sold.

09:25AM 13 In addition to that, the defendant was essentially  
09:25AM 14 selling this party atmosphere. And so by allowing,  
09:25AM 15 permitting, directing, and encouraging cocaine to flow freely  
09:25AM 16 through the club, he made it a place that people like John  
09:25AM 17 McDonald and Jeff Anzalone were dying to go.

09:25AM 18 So let's talk about Jeff Anzalone for a second. Was  
09:25AM 19 it -- was it an important purpose for the defendant to bring  
09:25AM 20 high-paying customers like Jeff to the club? Of course. Jeff  
09:25AM 21 said he went to Pharaoh's Gentlemen's Club over 100 times.  
09:25AM 22 And I got this -- the Court makes this, let me see if we can  
09:25AM 23 find Jeff here.

09:26AM 24 You're gonna be able to take this in the back. The  
09:26AM 25 Court puts together a photo of each witness. So if you don't

09:26AM 1 remember who someone is by their name, you know, you're going  
09:26AM 2 to be able to come back and look.

09:26AM 3 But we have Jeff Anzalone. Jeff went to Pharaoh's  
09:26AM 4 over 100 times. He testified from this witness stand every  
09:26AM 5 single time he went there he used cocaine. And I asked him  
09:26AM 6 Jeff, hey, what different areas around Pharaoh's did you use  
09:26AM 7 cocaine? And he listed every place in the club. He couldn't  
09:26AM 8 think of one location where he hadn't used club -- cocaine in  
09:26AM 9 the club.

09:26AM 10 Downstairs office? Yes. Upstairs office? Yes.

09:26AM 11 Bar? Yes. Tables by the stage? Yes. Jeff was doing cocaine  
09:26AM 12 all the time in Pharaoh's in every location in Pharaoh's, and  
09:26AM 13 he was spending a lot of money there. And he's not the only  
09:26AM 14 person.

09:26AM 15 Think about John McDonald. John McDonald loved  
09:26AM 16 Pharaoh's. He testified pretty late in the trial, I'm sure  
09:27AM 17 you remember him. John went to Pharaoh's, he distributed  
09:27AM 18 cocaine there. And I asked him how many times have you been  
09:27AM 19 to the club? He said it's uncountable.

09:27AM 20 And what did he like to do? It was obvious. He  
09:27AM 21 liked to use drugs and distribute drugs. And the place he  
09:27AM 22 chose to go was this defendant's club. And it's obvious why.  
09:27AM 23 Because that's the way the business was set up to function.  
09:27AM 24 Bring people like Jeff and John McDonald in to spend their  
09:27AM 25 money, to make him rich.

09:27AM 1           This defendant distributed cocaine himself inside of  
09:27AM 2 the club, and that's an important part of the reason why he  
09:27AM 3 maintained it. Allowing other dealers like Marcus Black, and  
09:27AM 4 Jessica Leyland or Charm, to distribute cocaine inside the  
09:27AM 5 club, that was an important reason why the defendant  
09:27AM 6 maintained the club.

09:27AM 7           Directing dancers to distribute cocaine to customers,  
09:27AM 8 like A.A. told you that she did, and like Kevin Myszka  
09:27AM 9 described for you that he procured cocaine that way, that was  
09:28AM 10 an important reason why the defendant maintained the club.

09:28AM 11           All of that conduct was designed on purpose to keep  
09:28AM 12 people there, to bring in the customer base that he wanted, to  
09:28AM 13 keep them spending money, to keep them going into the  
09:28AM 14 VIP Room.

09:28AM 15           You heard testimony cocaine use causes arousal. He's  
09:28AM 16 selling sex at his business. Cocaine use was an -- cocaine  
09:28AM 17 use and distribution was an important and significant part of  
09:28AM 18 keeping the business humming.

09:28AM 19           And there was some mention on opening statement  
09:28AM 20 about, oh, it's all alcohol sales, all the money comes from  
09:28AM 21 alcohol. I submit to you that's inconsistent with everything  
09:28AM 22 you heard from witnesses. But if we focus on alcohol for a  
09:28AM 23 second, why are people going to Pharaoh's to buy, like, a \$15  
09:28AM 24 beer? Or a drink that's double the price of a bar? What  
09:28AM 25 brings them there? Sex. Women. That's what brings them

09:28AM 1 there.

09:28AM 2 And the defendant's club wasn't going to be able to  
09:29AM 3 sell drinks at those over, you know, inflated prices unless  
09:29AM 4 customers were going there to engage in what you heard  
09:29AM 5 happened in the VIP Room.

09:29AM 6 In order for the dancers to be able to function and  
09:29AM 7 go in the VIP Room to work, many of them came in here and  
09:29AM 8 testified to you they needed nearly constant access to  
09:29AM 9 cocaine, and some of them opiates. The business wasn't gonna  
09:29AM 10 function, it wasn't gonna run, unless there was a steady flow  
09:29AM 11 of drugs going through it, and he knew that. That's not a  
09:29AM 12 shock to this defendant. You heard direct evidence of his  
09:29AM 13 knowledge of that.

09:29AM 14 We'll talk about it right now.

09:29AM 15 Think about what E.H. told you. E.H., you're gonna  
09:29AM 16 remember E.H., she's the woman who told Mr. Soehnlein she's on  
09:29AM 17 Team Not Getting Jizzed on and Told She Can't Call the Police.

09:29AM 18 E.H. went upstairs to put her luggage away, and she  
09:30AM 19 saw the woman who she had just observed downstairs overdosing.  
09:30AM 20 She saw her in the upstairs snorting cocaine. And E.H. looks  
09:30AM 21 at the woman, and this defendant looks at E.H., and what  
09:30AM 22 happens? He says to her, I help the girls out if they can't  
09:30AM 23 work. I can get you some, too.

09:30AM 24 That's the business model. If the women can't work,  
09:30AM 25 he's not making any money, so keeping constant access to drugs

09:30AM 1 available at the club was important. It was significant.

09:30AM 2 G.R. testified to you that when she worked at

09:30AM 3 Pharaoh's in 2009, when she was heavily addicted to cocaine

09:30AM 4 and opiates, that she could not have gotten through a single

09:30AM 5 shift at Pharaoh's without using cocaine or opiates.

09:30AM 6 A.B. testified to you that she worked at Pharaoh's a

09:30AM 7 decade later in 2019, and that she was so heavily addicted to

09:30AM 8 cocaine she used it multiple times per shift, every single

09:30AM 9 shift she worked. Ms. A.B. testified that if she didn't have

09:31AM 10 cocaine and she started to come down, she became suicidal.

09:31AM 11 And so when you use your common sense and your life

09:31AM 12 experience, and you evaluate Ms. A.B.'s testimony, you know

09:31AM 13 she wasn't going to be going in the VIP Room and giving lap

09:31AM 14 dances and making him money if she didn't have access to

09:31AM 15 cocaine. That wasn't gonna happen.

09:31AM 16 P.H. told you that when she would go through

09:31AM 17 withdrawals at Pharaoh's, the defendant would provide her with

09:31AM 18 opiates.

09:31AM 19 K.A., who worked at Pharaoh's from about 2012 until

09:31AM 20 about 2014, told you that she used between 2- and \$300 per

09:31AM 21 night of heroin and cocaine. Every night.

09:31AM 22 She said every time she went to work, she got high

09:31AM 23 there on cocaine and heroin. She testified, importantly I

09:31AM 24 would suggest to you, that she would not have been able to

09:31AM 25 dance if she wasn't high on drugs.

09:31AM 1 And that's consistent, this is a pattern that you  
09:31AM 2 heard from witness after witness, if I didn't have access to  
09:32AM 3 drugs, I would not have been able to work. That tells you  
09:32AM 4 that it was part of the business model.

09:32AM 5 A.A. told you that she worked at Pharaoh's from 2012  
09:32AM 6 to 2013. She testified that she was using between 6- and \$900  
09:32AM 7 per day of fentanyl, and that she was smoking fentanyl patches  
09:32AM 8 every single shift she worked at Pharaoh's. She said she  
09:32AM 9 would not have been able to dance or do anything if she didn't  
09:32AM 10 have access to drugs at the club where she's working.

09:32AM 11 R.W. also testified that when she worked at Pharaoh's  
09:32AM 12 in 2012, that she got nervous before going on stage the first  
09:32AM 13 time, and the DJ was like, oh, you're nervous? Here.  
09:32AM 14 Cocaine.

09:32AM 15 That's how the business runs. It's ingrained in the  
09:32AM 16 business model that this defendant set up.

09:32AM 17 I want to move on now to Wayne VanVleet for a second.  
09:32AM 18 Wayne VanVleet is an example of the business model at  
09:33AM 19 work. You heard testimony from more than one witness that he  
09:33AM 20 was considered a whale at the club because he was there all  
09:33AM 21 the time and he spent a lot of money.

09:33AM 22 Wayne spent all that money in the VIP Room, money  
09:33AM 23 that ended up in this defendant's pockets, but Wayne isn't  
09:33AM 24 there spending money in the VIP Room unless the dancers are  
09:33AM 25 able to go back there with him, and they're not doing that

09:33AM 1 unless they have nearly constant access to drugs.

09:33AM 2 All three women that you heard testify to about  
09:33AM 3 interacting with Wayne VanVleet told you they were heavily  
09:33AM 4 addicted to drugs at the time, that they would have never let  
09:33AM 5 him do what he did to them, and we'll get there, if it wasn't  
09:33AM 6 for those drug addictions.

09:33AM 7 So because money was making -- because making money  
09:33AM 8 was a significant reason that the defendant maintained the  
09:33AM 9 club, making sure that dancers had constant access to drugs  
09:33AM 10 was a significant reason that the defendant maintained the  
09:33AM 11 club. It's part of the business model.

09:34AM 12 Another reason that keeping drugs flowing through  
09:34AM 13 Pharaoh's was important and significant to this defendant is  
09:34AM 14 because of the access to power that it gave him.

09:34AM 15 You heard testimony that the defendant had a private  
09:34AM 16 upstairs area where he brought lawyers, and judges,  
09:34AM 17 politicians, athletes, at least one actor, and members of  
09:34AM 18 powerful motorcycle gangs. Having access to those people,  
09:34AM 19 having something that they wanted, gave him a status and power  
09:34AM 20 that he wanted.

09:34AM 21 You know what mattered to him. He bragged about it.  
09:34AM 22 He bragged about the judges, and the important people in law  
09:34AM 23 enforcement that he knew. And you don't need to be a rocket  
09:34AM 24 scientist to know why those people wanted to come to Pharaoh's  
09:34AM 25 and go upstairs.

09:34AM 1 I suggest to you the testimony established that  
09:34AM 2 certain prominent people who wanted to have a place to go and  
09:34AM 3 snort cocaine without consequences knew where to go. They  
09:34AM 4 went to this defendant, they went to Pharaoh's Gentlemen's  
09:35AM 5 Club.

09:35AM 6 The upstairs at Pharaoh's was maintained on purpose  
09:35AM 7 as a place to use and distribute cocaine. Distribute it to  
09:35AM 8 your friends, distribute it to dancers, use it yourself. That  
09:35AM 9 was a significant and important reason why he maintained the  
09:35AM 10 club.

09:35AM 11 The third reason that you know using and distributing  
09:35AM 12 drugs was the purpose or a significant purpose for the  
09:35AM 13 defendant maintaining the club was because it allowed him to  
09:35AM 14 have his own personal sex party and drug party upstairs.

09:35AM 15 Let's -- let's recap what we learned about that.

09:35AM 16 C.B. testified, she was a manager, she was the Jets  
09:35AM 17 fan, she testified that she was a manager between 2011 and  
09:35AM 18 2013. She told you about the difference between what Don  
09:35AM 19 Parrino wanted out of the club and what this defendant wanted.

09:35AM 20 So back in that timeframe when Parrino was still  
09:36AM 21 around in 2011 to '13, she said, yeah, Parrino wanted me to  
09:36AM 22 wear 4-inch heels and a bolero jacket, which I had to Google,  
09:36AM 23 and she said that Peter Gerace wanted her -- wanted it to be  
09:36AM 24 Peter's Playhouse. Those were her words. And she described  
09:36AM 25 for you what she meant by "Peter's Playhouse."

09:36AM 1 She told you that she saw the defendant bringing  
09:36AM 2 dancers upstairs, and that she saw the dancers come downstairs  
09:36AM 3 after, that they appeared to be high on drugs, and that they  
09:36AM 4 would ask her for baby wipes, or tell her that they needed to  
09:36AM 5 clean themselves up. She wasn't exactly out on an island with  
09:36AM 6 that testimony either.

09:36AM 7 A.G., a/k/a Barbie, she was a short blonde-haired  
09:36AM 8 woman who testified probably middle of the trial. She told  
09:36AM 9 you that on her second day working at Pharaoh's, the defendant  
09:36AM 10 invited her upstairs with two other women to party. She told  
09:36AM 11 you that she interpreted "party" in that context to mean use  
09:36AM 12 drugs with him and have sex with him. She declined. And  
09:37AM 13 we'll talk about what happened to her in a little bit.

09:37AM 14 G.R. observed the defendant using and distributing  
09:37AM 15 cocaine upstairs. The defendant brought G.R. up there to use  
09:37AM 16 drugs, to coerce her into sex, so he could impress his friends  
09:37AM 17 like she was a party favor.

09:37AM 18 J.Z. observed the defendant using and distributing  
09:37AM 19 cocaine upstairs.

09:37AM 20 A.A. observed the defendant using and distributing  
09:37AM 21 cocaine upstairs.

09:37AM 22 A.P. observed the defendant using and distributing  
09:37AM 23 cocaine upstairs.

09:37AM 24 A.B. observed the defendant -- she testified the  
09:37AM 25 defendant brought her upstairs and gave her cocaine.

09:37AM 1 C.C. said she observed the defendant using and  
09:37AM 2 distributing cocaine upstairs up to 20 times, that was her  
09:37AM 3 testimony.

09:37AM 4 P.H. testified that she was provided cocaine by the  
09:37AM 5 defendant upstairs. She also testified that she went upstairs  
09:37AM 6 with this defendant and a member of the Pagan's Motorcycle  
09:37AM 7 Club, and they snorted methamphetamine up there.

09:38AM 8 Katrina Nigro observed the defendant using and  
09:38AM 9 distributing cocaine upstairs.

09:38AM 10 K.L. observed the defendant using and distributing  
09:38AM 11 cocaine upstairs. And you know what happened to K.L., you  
09:38AM 12 know she was brought upstairs to be coerced into sex.

09:38AM 13 L.L. observed the defendant using and distributing  
09:38AM 14 cocaine in the upstairs.

09:38AM 15 This defendant getting to have his own personal  
09:38AM 16 space, where vulnerable drug-addicted women were just a  
09:38AM 17 staircase away, that was a significant and important reason  
09:38AM 18 that he maintained Pharaoh's. That's the second element.

09:38AM 19 The third element, that the defendant acted  
09:38AM 20 knowingly, that he had knowledge.

09:38AM 21 I expect that the judge is going to tell you a person  
09:38AM 22 does something knowingly when they do it voluntarily, when  
09:38AM 23 it's, you know, on purpose and not by accident or by mistake.  
09:38AM 24 That makes sense.

09:38AM 25 You know the defendant knowingly maintained Pharaoh's

09:38AM 1 for the purpose of using and distributing drugs based on his  
09:38AM 2 own words and his own actions.

09:39AM 3 We talked about E.H. When the defendant brings this  
09:39AM 4 overdosing dancer upstairs and has her doing lines of coke to  
09:39AM 5 wake her up so she can get back to work, and he tells  
09:39AM 6 Ms. E.H., I help the girls if they need to work, I can get you  
09:39AM 7 some too, that speaks to his knowledge that he was maintaining  
09:39AM 8 Pharaoh's for the purpose, a significant or important purpose  
09:39AM 9 was to distribute drugs because it kept the business moving.

09:39AM 10 The defendant's actions tell you that he acted  
09:39AM 11 knowingly. L.L. testified that when she showed up to work  
09:39AM 12 dope sick going through physical withdrawals from heroin, she  
09:39AM 13 was unable to work, she couldn't do anything when she was like  
09:39AM 14 that. She said this defendant called someone and had opiates  
09:39AM 15 delivered to her there so that he could get her back on the  
09:39AM 16 floor, get her back to work, get her back to filling his  
09:39AM 17 pockets up with money. It has to happen in order for the  
09:40AM 18 business to work, and that's how you know the defendant acted  
09:40AM 19 knowingly. His own words and his own actions validate and  
09:40AM 20 support that he acted knowingly.

09:40AM 21 Giving cocaine to customers or making cocaine  
09:40AM 22 available to customers, that was an important part. And  
09:40AM 23 that's why this defendant chose to allow dealers like Marcus  
09:40AM 24 Black -- you heard a lot of testimony about Marcus, one of the  
09:40AM 25 preferred drug dealers that this defendant had working at his

09:40AM 1 club, Charm, these were people, A.A., that not only sold drugs  
09:40AM 2 at his club, but people he knew that sold drugs at his club,  
09:40AM 3 and people that tons of witnesses testified he was incredibly  
09:40AM 4 close with.

09:40AM 5 I suggest to you that the proof, the evidence, shows  
09:40AM 6 that people like Marcus and Jessica were employees at the club  
09:41AM 7 in truth, if not on paper. Their job was to sell drugs there.  
09:41AM 8 They got money, and he had a club with constant access to  
09:41AM 9 cocaine, which made his club more money. So that's Count 3,  
09:41AM 10 maintaining a drug-involved premises.

09:41AM 11 I suggest to you that when you start your  
09:41AM 12 deliberations, this is just my suggestion, I suggest you start  
09:41AM 13 at Count 3. Work your way through it.

09:41AM 14 Element 1, check, he maintained the place.

09:41AM 15 Element 2, check, he did it for the purpose, a  
09:41AM 16 significant purpose of making drugs available, distributing  
09:41AM 17 and using them.

09:41AM 18 Element 3, he acted knowingly, check.

09:41AM 19 Proven beyond a reasonable doubt right here in this  
09:41AM 20 courtroom. Find him guilty of Count 3, because his choices,  
09:41AM 21 and his conduct, make him guilty of Count 3.

09:41AM 22 Let's talk about Count 4. Conspiracy to distribute  
09:42AM 23 controlled substances between February -- or, between 2009 and  
09:42AM 24 February of 2019.

09:42AM 25 Let's talk briefly about conspiracy generally.

09:42AM 1 I expect that Judge Vilardo's gonna, you know, he'll  
09:42AM 2 instruct you on the law of what a conspiracy is. I expect  
09:42AM 3 he's going to tell you it's basically a criminal partnership.  
09:42AM 4 It's an agreement between two or more people to violate some  
09:42AM 5 law of the United States.

09:42AM 6 And in Count 4, it's an agreement between this  
09:42AM 7 defendant and other people to distribute drugs, and to possess  
09:42AM 8 with the intent to distribute drugs.

09:42AM 9 There's two elements to a narcotics conspiracy.

09:42AM 10 First, that two or more people entered the unlawful  
09:42AM 11 agreement charged in the indictment; and

09:42AM 12 Second, that the defendant knowingly and willfully  
09:42AM 13 became a member of that agreement, of that conspiracy.

09:42AM 14 So in order to know in the first element if -- if two  
09:43AM 15 or more people existed in that unlawful agreement charged in  
09:43AM 16 the indictment, you need to know what is the unlawful  
09:43AM 17 agreement charged in the indictment. And you'll get the  
09:43AM 18 indictment when you go back there, you'll be able to look at  
09:43AM 19 it. But it has two parts, the agreement, you'll see.

09:43AM 20 One, to possess with intent to distribute and  
09:43AM 21 distribute cocaine, cocaine base, methamphetamine,  
09:43AM 22 amphetamine, marijuana, or heroin, or, to maintain Pharaoh's  
09:43AM 23 Gentlemen's Club for the purpose of distributing and using  
09:43AM 24 those same drugs that I just listed.

09:43AM 25 To boil it down as simple as possible, the indictment

09:43AM 1 charges a conspiracy or an agreement, between two or more  
09:43AM 2 people, including him, to distribute drugs or to maintain  
09:43AM 3 Pharaoh's for the purpose of using or distributing drugs.

09:43AM 4           If we prove either of those two objects to you,  
09:43AM 5 either of those two objects of the conspiracy, I suggest the  
09:44AM 6 judge is going to instruct you that that's sufficient, it  
09:44AM 7 doesn't have to be both.

09:44AM 8           I submit to you that we've proven both beyond a  
09:44AM 9 reasonable doubt. But keep in mind, either one of those  
09:44AM 10 objects of the conspiracy is sufficient to find this defendant  
09:44AM 11 guilty.

09:44AM 12           Let's talk about how we proved the existence of an  
09:44AM 13 agreement to distribute drugs.

09:44AM 14           Obviously, it's not a scene from a, like, a movie  
09:44AM 15 where there's a bunch of villains in costumes sitting around a  
09:44AM 16 huge conference table. That's not how things happen in real  
09:44AM 17 life. I expect that the judge is going to tell you that when  
09:44AM 18 you determine whether the agreement existed here, you should  
09:44AM 19 keep in mind that it doesn't have to be an express or formal  
09:44AM 20 or written agreement. That's not required under the law.

09:44AM 21           I expect that the judge is going to tell you that you  
09:44AM 22 have to find that there was a mutual understanding, spoken or  
09:44AM 23 unspoken, a mutual understanding between people to cooperate  
09:45AM 24 with each other, to accomplish an unlawful act. And selling  
09:45AM 25 drugs is an unlawful act.

09:45AM 1 So did the defendant have a mutual agreement, a  
09:45AM 2 mutual understanding, spoken or unspoken, with other people to  
09:45AM 3 sell drugs at Pharaoh's? You know he did.

09:45AM 4 The defendant was in an unlawful agreement. He had a  
09:45AM 5 mutual understanding with his good friend, Marcus Black. You  
09:45AM 6 heard testimony in detail from A.A. that customers would come  
09:45AM 7 up to her, they would ask for cocaine, she would go and check  
09:45AM 8 with this defendant, hey, should I -- can I get that person  
09:45AM 9 cocaine? And he would say, yeah, go see Marcus. She'd go to  
09:45AM 10 Marcus, she'd get the drugs, and she'd deliver them. That's a  
09:45AM 11 conspiracy right there. That's it.

09:45AM 12 It's an -- a mutual understanding between those three  
09:45AM 13 people to sell drugs at Pharaoh's.

09:45AM 14 And it's not the only conspiracy -- or, the only  
09:45AM 15 member of the conspiracy that existed. The defendant was in  
09:46AM 16 that same unlawful agreement, he had that same mutual  
09:46AM 17 understanding with Jessica Leyland, another preferred drug  
09:46AM 18 dealer who sold to customers and dancers at Pharaoh's.

09:46AM 19 Based on the testimony of L.L., you know the  
09:46AM 20 defendant was in an unlawful agreement with Scooter, the  
09:46AM 21 person who would drop off heroin to the defendant to provide  
09:46AM 22 to L.L. so she could work.

09:46AM 23 Kevin Myszka described for you when he went to  
09:46AM 24 Pharaoh's one time that he had been using cocaine, he was a  
09:46AM 25 drug addict, he ran out of cocaine, and he wanted to use more.

09:46AM 1 And so in order to stay at the club, Kevin Myszka needed to  
09:46AM 2 use more cocaine or else, I submit to you, he was going to  
09:46AM 3 leave. And so he goes to the defendant, and he says hey, can  
09:46AM 4 I get some coke? Or whatever words, I don't think he  
09:46AM 5 remembered the exact words he uses, but he asked the defendant  
09:47AM 6 for cocaine.

09:47AM 7 Minutes later, a dancer who I submit to you is  
09:47AM 8 probably Cherry, probably A.A. here, comes walking over and  
09:47AM 9 delivers Kevin Myszka cocaine. That's the mutual  
09:47AM 10 understanding that this defendant had with other members of  
09:47AM 11 his drug conspiracy. Provide drugs to the customers, keep the  
09:47AM 12 club flowing, keep the money pouring into my pockets. It's an  
09:47AM 13 agreement to distribute drugs. People acting together to  
09:47AM 14 accomplish an unlawful purpose.

09:47AM 15 The second element, we have to prove the defendant's  
09:47AM 16 membership in the conspiracy. We have to prove to you that  
09:47AM 17 this defendant knowingly and willfully and voluntarily became  
09:47AM 18 a member of that agreement with that mutual understanding to  
09:47AM 19 sell drugs at Pharaoh's, or to maintain Pharaoh's as a  
09:47AM 20 drug-involved premises.

09:47AM 21 In determining that, you'll be asked to decide, to --  
09:47AM 22 to question yourselves, did he have a stake, like a financial  
09:48AM 23 stake or some other type of stake, in the outcome of the  
09:48AM 24 conspiracy? And I suggest to you that you know he did. In  
09:48AM 25 terms of distributing drugs at Pharaoh's, the defendant had an

09:48AM 1 obvious financial motive to allow, permit, encourage, and  
09:48AM 2 sometimes direct that to happen, to sometimes do it himself.  
09:48AM 3 It made the club more money. You heard from  
09:48AM 4 customers, you heard from dancers, that cocaine was integral  
09:48AM 5 to the functioning of the club.  
09:48AM 6 You heard from numerous drug-addicted dancers.  
09:48AM 7 People that were addicted to Lortabs like K.L., like P.H.  
09:48AM 8 They wouldn't have been able to work if they didn't have  
09:48AM 9 access to those drugs, so this defendant had a stake, he had a  
09:48AM 10 financial interest, in order to keep his business flowing,  
09:48AM 11 keep the gears turning, to make sure that drugs were available  
09:48AM 12 to be distributed.  
09:48AM 13 You heard testimony from A.P., and it was a really  
09:49AM 14 long time ago at this point. She was witness number 2. But  
09:49AM 15 that's A.P., nobody could pronounce her last name, A.P.  
09:49AM 16 testified that she had been dating the defendant on and off  
09:49AM 17 and she worked at Pharaoh's from 2006 to 2013. She told you  
09:49AM 18 that she knew and she -- think about it, back then she was  
09:49AM 19 close to the defendant, they were dating, she knew him to be  
09:49AM 20 close friends with Marcus Black. She told you the defendant  
09:49AM 21 would send her to buy cocaine from Marcus and bring it back to  
09:49AM 22 him. That's an -- that's an agreement, a mutual  
09:49AM 23 understanding, to use and distribute drugs at Pharaoh's, to  
09:49AM 24 maintain Pharaoh's for the purpose of -- of distributing and  
09:49AM 25 using drugs.

09:49AM 1 A.P. told you that she had personally observed the  
09:49AM 2 defendant buying drugs from Marcus. And all that goes to this  
09:49AM 3 question, did he knowingly and willfully become a member of  
09:49AM 4 this agreement. He knew Marcus was a drug dealer, and for  
09:49AM 5 years, over the course of 45 witnesses' testimony, you heard  
09:49AM 6 about Marcus being at the club all the time, constantly. That  
09:50AM 7 speaks to his knowledge, his willingness to be in this  
09:50AM 8 agreement, to have Marcus selling drugs to customers and  
09:50AM 9 dancers at Pharaoh's.

09:50AM 10 A.B. told you that she saw Marcus Black frequently at  
09:50AM 11 Pharaoh's, and that he interacted most with the defendant.

09:50AM 12 I expect the judge is going to tell you that  
09:50AM 13 conspiracies by their nature are secretive, right? That's the  
09:50AM 14 point, you don't want to get caught, you're trying to keep it  
09:50AM 15 quiet, so actions often speak louder than words. I expect  
09:50AM 16 that's going to be in his instruction to you. But think about  
09:50AM 17 what you heard from the witnesses. Marcus Black and Peter  
09:50AM 18 thick as thieves, together all the time at the club, and  
09:50AM 19 Marcus is there selling cocaine. That's what he does. That's  
09:50AM 20 his job.

09:50AM 21 You can and should infer from that the obvious, which  
09:50AM 22 is they were doing it together. It was in the defendant's  
09:50AM 23 best interest that Marcus sold drugs there, and it was in  
09:50AM 24 Marcus's best interest. Marcus had a ready base of customers  
09:51AM 25 at Pharaoh's. Dancers needed cocaine, customers wanted

09:51AM 1 cocaine, Peter was blowing tons of cocaine upstairs with his  
09:51AM 2 friends. So Marcus was raking in money. And this defendant  
09:51AM 3 needed to keep the coke flowing through the club. So they  
09:51AM 4 have a mutual understanding, they have an agreement, and  
09:51AM 5 that's the crime charged in Count 4.

09:51AM 6 You heard from R.W. that she heard Marcus Black  
09:51AM 7 advertising with his mouth, with his words, advertising, hey,  
09:51AM 8 I got White Girl, I got White Girl for sale. And there was  
09:51AM 9 some cross-examination suggesting that maybe she got it wrong  
09:51AM 10 and he was talking about, like, Caucasian women that worked at  
09:51AM 11 the club. But I suggest to you that if you use your common  
09:51AM 12 sense, you can dispense with that. R.W. was a drug addict,  
09:51AM 13 and she knew the slang used for drugs, and she told you,  
09:51AM 14 testimony that I submit you should find credible, that White  
09:51AM 15 Girl was in reference to cocaine when Marcus Black was saying  
09:51AM 16 it. And it's consistent with the testimony of essentially all  
09:51AM 17 of the other witnesses that Marcus sold cocaine at the club.

09:52AM 18 Then you have A.A. who came here and told you about  
09:52AM 19 her own participation in that conduct. And I would suggest to  
09:52AM 20 you that you can see the -- the way that that built up, the  
09:52AM 21 way that the defendant brought A.A. upstairs, she described  
09:52AM 22 that for you. She said the defendant put a credit card with  
09:52AM 23 cocaine up to her nose and told her to sniff, she sniffed it.  
09:52AM 24 And that's grooming behavior. It's like, hey, let's get her  
09:52AM 25 on board with the drug stuff and we'll use her to hit off the

09:52AM 1 customers.

09:52AM 2 Who were the two people that were up there with her?

09:52AM 3 Marcus and this defendant. Bringing her into the fold.

09:52AM 4 Peter's not gonna be handing out the drugs to the customers on

09:52AM 5 the floor, and this insulates Marcus as well if anybody gets

09:52AM 6 caught making a handoff, that's the dancer, that's part of the

09:52AM 7 corrupt agreement, the criminal conspiracy that this defendant

09:52AM 8 was at the center of at his club.

09:52AM 9 Marcus wasn't the only preferred drug dealer. Let's

09:53AM 10 look at Jessica Leyland, a/k/a Charm.

09:53AM 11 So these three pictures in evidence, 560, 561, and

09:53AM 12 562, I submit to you that they show you physically how close

09:53AM 13 she was to the defendant, and they also depict what you heard

09:53AM 14 from the testimony of lots of witnesses during the course of

09:53AM 15 this trial.

09:53AM 16 A.P., she told you that Charm was very close with the

09:53AM 17 defendant, and that Charm was a drug dealer who sold cocaine

09:53AM 18 to dancers, employees and customers.

09:53AM 19 And, by the way, A.P., who was dating him, was also

09:53AM 20 one of the preferred drug dealers who sold cocaine to

09:53AM 21 customers at Pharaoh's and dancers at Pharaoh's.

09:53AM 22 C.C., she was the defendant's fiancée for a period of

09:53AM 23 time. She testified that Charm sold cocaine, that's Jessica

09:54AM 24 here, Charm sold cocaine to people at Pharaoh's. And she also

09:54AM 25 testified when she was asked did the defendant know Charm was

09:54AM 1 selling cocaine, and C.C. said yeah, it was obvious.

09:54AM 2 C.B. testified that Charm would come out of the  
09:54AM 3 feature dressing room, and it would look like a snow globe in  
09:54AM 4 there.

09:54AM 5 P.H. testified she knew Jessica Leyland, Charm, to be  
09:54AM 6 very, very close and loyal to this defendant. P.H. testified  
09:54AM 7 that the defendant had actually sent her to purchase cocaine  
09:54AM 8 from Charm while they were at Pharaoh's. And that speaks to  
09:54AM 9 the defendant's knowledge. He knows Leyland's a drug dealer,  
09:54AM 10 she's someone he's very, very close to, she's loyal to him.  
09:54AM 11 You put those pieces together, you know that the defendant  
09:54AM 12 wasn't unhappy that Jessica Leyland was selling drugs at the  
09:54AM 13 club. He didn't fire Jessica Leyland for selling drugs at the  
09:54AM 14 club. It's part of the business model. You need drug dealers  
09:54AM 15 there so that dancers and customers can get high. She was one  
09:55AM 16 of the preferred drug dealers at the club.

09:55AM 17 Katrina Nigro told you that the defendant had an  
09:55AM 18 arrangement with Charm where Charm would have this stag  
09:55AM 19 company help bring women to the club to work there, and that  
09:55AM 20 the defendant let her deal drugs at the club.

09:55AM 21 They each had a stake in the outcome. Think about  
09:55AM 22 that, same as Marcus Black's stake. Charm has customers all  
09:55AM 23 over the place. She's distributing individually-packaged bags  
09:55AM 24 of cocaine, so it's not like she has one friend who says hey,  
09:55AM 25 can I get a bump?, and she gives it one time to someone. She

09:55AM 1 got pulled over leaving Pharaoh's, and she had however much  
09:55AM 2 cocaine that the state trooper found in her car -- and  
09:55AM 3 Mr. Tripi will probably be able to remind me of how much that  
09:55AM 4 was -- but it was individually packaged. It was set up for  
09:55AM 5 sale. That was her business, she made money. And the  
09:55AM 6 defendant, he benefited from it also for all the reasons that  
09:55AM 7 we've discussed, and I'm not going to get repetitive. Well,  
09:55AM 8 not more repetitive.

09:56AM 9                   Corrupt DEA Agent Joe Bongiovanni, he's a member,  
09:56AM 10 he's a member of the narcotics conspiracy. Here he is. And  
09:56AM 11 we'll talk about him in a lot more detail when we get to the  
09:56AM 12 public corruption spot. But just because he's not handing out  
09:56AM 13 drugs at Pharaoh's doesn't mean he doesn't have a role in the  
09:56AM 14 conspiracy.

09:56AM 15                   He has a very different, very important role in this  
09:56AM 16 defendant's narcotics conspiracy:

09:56AM 17                   Keep me safe. When probation comes, or when the FBI  
09:56AM 18 starts investigating, or when the DEA starts investigating,  
09:56AM 19 shut it down.

09:56AM 20                   Give me advice. Hey, I'm a drug dealer. Drug  
09:56AM 21 dealers, burner phones, can the law enforcement ping those and  
09:56AM 22 locate them? And Bongiovanni responds on retainer for this  
09:56AM 23 defendant. That's his role in the conspiracy. And we'll dig  
09:56AM 24 more into that in a little bit.

09:56AM 25                   The judge is -- I expect the judge is going to tell

09:57AM 1 you that not everybody in a conspiracy has to have an equal  
09:57AM 2 role, not equal culpability. The elements, tether  
09:57AM 3 yourselves -- I suggest you, you should tether yourself to the  
09:57AM 4 elements. Facts plus law equals verdict.

09:57AM 5 So look at those elements, apply the facts as you  
09:57AM 6 decide them, and that's how you should come to a verdict.

09:57AM 7 I want to point out also before we move on from  
09:57AM 8 narcotics conspiracy, there's numerous different substances  
09:57AM 9 that are listed in the indictment, I read them earlier,  
09:57AM 10 cocaine, cocaine base, methamphetamine, amphetamine, heroin,  
09:57AM 11 and marijuana. All those are listed as objects of the  
09:57AM 12 conspiracy to use or distribute those substances.

09:57AM 13 You do not have to find that all of those substances  
09:57AM 14 were a part of this conspiracy to convict the defendant. One  
09:57AM 15 of them, or any combination of them, is sufficient. And I  
09:57AM 16 expect the judge will instruct you on that when he instructs  
09:57AM 17 you on the law.

09:57AM 18 So cocaine. Right? Let's start with an easy one.  
09:58AM 19 Cocaine, which you heard tons of testimony about, was an  
09:58AM 20 obvious object of the mutual agreement, the criminal  
09:58AM 21 partnership, to distribute drugs at Pharaoh's. And because  
09:58AM 22 cocaine was one of the substances listed, that's sufficient  
09:58AM 23 even if you didn't believe, for example, amphetamine was.

09:58AM 24 Now, I submit to you that you've heard testimony on  
09:58AM 25 every substance, and that we've proven this agreement to

09:58AM 1 distribute those drugs beyond a reasonable doubt.

09:58AM 2 Now, the defendant might argue, hey, I -- how could I  
09:58AM 3 have possibly known every time Marcus Black was selling drugs?

09:58AM 4 Or how could I have possibly known every customer that Charm  
09:58AM 5 was hitting off at the club?

09:58AM 6 That doesn't matter. The judge is going to explain  
09:58AM 7 to you that coconspirators don't need to be apprised or aware  
09:58AM 8 of every action that another coconspirator undertakes. You  
09:59AM 9 don't need to know all the details of the conspiracy.

09:59AM 10 I expect the judge is going to tell you that what's  
09:59AM 11 necessary is that the defendant must have participated in the  
09:59AM 12 conspiracy with knowledge of at least some of its purposes or  
09:59AM 13 objectives and with the intention of aiding in the  
09:59AM 14 accomplishment of those unlawful ends. Check.

09:59AM 15 The defendant knew the objective was to sell drugs to  
09:59AM 16 customers and dancers and keep the club making money. He  
09:59AM 17 intended to accomplish that objective in the ways we just  
09:59AM 18 discussed. Sometimes handing the drugs out himself, sometimes  
09:59AM 19 directing A.A. go to Marcus, and by setting up specific  
09:59AM 20 preferred drug dealers that were allowed to work and sell at  
09:59AM 21 the club like Jessica Leyland, Marcus Black and others.

09:59AM 22 So that's Count 4, conspiracy to distribute  
09:59AM 23 controlled substances. A mutual understanding and agreement  
09:59AM 24 between two or more people to move drugs through the club. To  
09:59AM 25 maintain Pharaoh's as a drug-involved premises.

10:00AM 1 Two elements, both met, proven beyond a reasonable  
10:00AM 2 doubt right here in this courtroom.

10:00AM 3 Find him guilty of Count 4, because his choices and  
10:00AM 4 his conduct make him guilty of Count 4.

10:00AM 5 And that covers the first category of proof, drug  
10:00AM 6 trafficking. I told you we're going to cover four different  
10:00AM 7 ones, they're not all equal length, so --

10:00AM 8 The next one, though, is -- is a big one, the next  
10:00AM 9 category of proof is sex trafficking. We're going to cover  
10:00AM 10 this category, we'll talk about Count 5, and then I'm going to  
10:00AM 11 ask the judge for a break. So, let's talk about the sex  
10:00AM 12 trafficking here.

10:00AM 13 Conspiring to commit sex trafficking between 2009 and  
10:00AM 14 2018. That's what the defendant's charged with in Count 5.  
10:00AM 15 And that crime has two different elements.

10:00AM 16 First, that a conspiracy existed to commit sex  
10:00AM 17 trafficking of an adult by force, threats of force, fraud, or  
10:01AM 18 coercion was formed or reached or entered into by two or more  
10:01AM 19 persons. That's the criminal partnership we were talking  
10:01AM 20 about a minute ago.

10:01AM 21 Second, that at some time during the existence of  
10:01AM 22 that conspiracy, the defendant knowingly and willfully became  
10:01AM 23 a member of the conspiracy.

10:01AM 24 So those are the two elements for Count 5.

10:01AM 25 But in order to understand whether someone is guilty

1 of conspiring to commit sex trafficking, we really need to get  
2 into the weeds on what is sex trafficking. So I'm going to  
3 cover those elements with you now, but I want you to keep in  
4 mind, and you're smart, you get it, the elements that are  
5 required for Count 5 are the two conspiracy elements.

6           But let's talk about what sex trafficking is, the  
7 substantive offense.

8           I warn you, the statute is long and it's wordy  
9 because there's a lot of different ways to commit sex  
10 trafficking of an adult by force or coercion.

11           The first element that the defendant knowingly  
12 transported, or recruited, or enticed, or harbored, or  
13 provided, or obtained, or maintained, or patronized, or  
14 solicited a person by any means. Or benefited financially in  
15 participation -- from participation in a venture which engages  
16 in some of those acts. That's element one, procuring a  
17 person, basically.

18           Second, that the defendant knew or was in reckless  
19 disregard of the fact that force, fraud, or coercion would be  
20 used with respect to this person.

21           Third, that the defendant knew or was in reckless  
22 disregard of the fact that this person would be engaged in a  
23 commercial sex act, sex in exchange for something of value.

24           And fourth, that the defendant's conduct was in or  
25 affecting interstate or foreign commerce.

10:03AM 1 Let's start with the first element.

10:03AM 2 G.R. The defendant enticed, he solicited, and he  
10:03AM 3 provided G.R.

10:03AM 4 A.A. The defendant enticed, solicited, and provided  
10:03AM 5 A.A.

10:03AM 6 L.L., K.A. The defendant enticed, solicited, and  
10:03AM 7 provided them.

10:03AM 8 The defendant enticed, solicited, and provided Shelby  
10:03AM 9 Johnston.

10:03AM 10 Think about the testimony of L.L. in particular for a  
10:03AM 11 moment. In that moment that L.L. described for you where the  
10:03AM 12 defendant, who knows she's a drug addict, tells her, go in the  
10:03AM 13 back with Wayne, he's gonna stick his fingers inside of you,  
10:03AM 14 but he'll tip you extra, and Brian will overlook the camera.

10:04AM 15 His words.

10:04AM 16 When the defendant says that to L.L., he's providing  
10:04AM 17 her, he's soliciting her. He's providing her to Wayne, he's  
10:04AM 18 soliciting her to go in the back and allow a man to stick his  
10:04AM 19 fingers inside of her vagina in exchange for a thing of value,  
10:04AM 20 money that he was gonna give her. He's literally describing  
10:04AM 21 the element. Hey, go in the back with Wayne. Wayne will  
10:04AM 22 stick his fingers in you. He'll give you extra, and Brian  
10:04AM 23 will overlook the cameras.

10:04AM 24 That's the defendant providing, soliciting, L.L. And  
10:04AM 25 that's just one example of when he did it to her.

10:04AM 1 Let's talk more in detail about G.R. When the  
10:04AM 2 defendant brought her upstairs at a time when she described  
10:04AM 3 for you what her life was like, heavily addicted to drugs,  
10:04AM 4 provided her with cocaine, and then told her, go take care of  
10:04AM 5 my friend, and I'll take care of you.

10:04AM 6 When he did that, and then sent her into a bathroom  
10:05AM 7 to have sex with a stranger, he was providing her. He was  
10:05AM 8 providing her to a stranger. He was enticing her, soliciting  
10:05AM 9 her. Those are the words that are described in element 1.

10:05AM 10 And you've heard from multiple victims in this case,  
10:05AM 11 the way that the defendant provided them, solicited them.

10:05AM 12 We can look at another example.

10:05AM 13 We can talk about K.L. We can talk about how K.L.  
10:05AM 14 described the first time that she used Lortabs because she  
10:05AM 15 told the defendant that she had a headache, and he gave her  
10:05AM 16 Lortabs, opiate pain medication. How she became addicted to  
10:05AM 17 those. And how one day when she was at work and she didn't  
10:05AM 18 have any, and she was going through physical drug withdrawals,  
10:05AM 19 how she went upstairs and told the defendant about that, and  
10:05AM 20 how he told her, you know what you have to do.

10:06AM 21 When he said "you know what you have to do," this  
10:06AM 22 defendant enticed K.L., the defendant obtained K.L., the  
10:06AM 23 defendant patronized K.L.

10:06AM 24 How about recruited? Recruited is a word in the  
10:06AM 25 statute. Think back to the heart-wrenching testimony from

10:06AM 1 L.L. about this defendant grooming her when she's new to the  
10:06AM 2 club, telling her, hey, would you be willing to meet up with  
10:06AM 3 men outside?

10:06AM 4 I submit to you that that is testimony of the  
10:06AM 5 defendant recruiting L.L., whom he would later traffic.

10:06AM 6 So that covers the first element. You'll have the  
10:06AM 7 charge, the judge will give you the law, you can look at all  
10:06AM 8 those words -- obtain, provided -- I gave you some examples  
10:06AM 9 and we're gonna talk now about the second element.

10:06AM 10 The defendant knew or was in reckless disregard of  
10:06AM 11 the fact that force, threats of force, fraud, or coercion  
10:07AM 12 would be used with respect to a victim.

10:07AM 13 First and most importantly, let's discuss coercion.  
10:07AM 14 I expect that the judge is going to tell you that in part  
10:07AM 15 coercion is a threat of serious harm.

10:07AM 16 Serious harm includes physical harm and nonphysical  
10:07AM 17 harm. So let's look at physical harm first.

10:07AM 18 In this case, the serious physical harm, the threat  
10:07AM 19 of serious physical harm, is the threat associated with drug  
10:07AM 20 withdrawal sickness. You heard the testimony from the  
10:07AM 21 victims. Many of them described, and we're going to go  
10:07AM 22 through it in some detail in a moment, what it's like to  
10:07AM 23 experience drug withdrawals. That's significant serious  
10:07AM 24 physical harm. Vomiting, shaking, the flu times 10, or the  
10:07AM 25 flu times 20.

10:07AM 1 Waving that power over someone is coercive. And  
10:07AM 2 we'll talk more about it.

10:08AM 3 But serious harm can also be nonphysical, like  
10:08AM 4 financial harm. In this case, financial harm includes the  
10:08AM 5 defendant's ability to fire dancers. Like when he fired, I  
10:08AM 6 submit to you he fired A.G. because she wouldn't go upstairs  
10:08AM 7 and have sex with him. That's serious financial harm or the  
10:08AM 8 threat of serious financial harm.

10:08AM 9 It includes the defendant's ability to control  
10:08AM 10 whether a dancer gets called up on stage and how frequently,  
10:08AM 11 controlling their ability to earn money.

10:08AM 12 It includes this defendant's power to prevent a  
10:08AM 13 dancer from working elsewhere. And you heard testimony from  
10:08AM 14 L.L. The defendant -- one time she said to him, hey, I'll  
10:08AM 15 just go work somewhere else, and this defendant told you, no,  
10:08AM 16 you won't. I can call anyone at any club, and say whatever I  
10:08AM 17 want about you and they won't hire you.

10:08AM 18 You, you know, your recollection controls about  
10:08AM 19 exactly what words she used, but the message that this  
10:09AM 20 defendant conveyed to her was crystal clear, I can stop you  
10:09AM 21 from being able to work somewhere else. And that's the threat  
10:09AM 22 of serious financial harm. He made them entirely dependant  
10:09AM 23 upon himself when he stopped them from working.

10:09AM 24 And you heard testimony from a few people about that.  
10:09AM 25 P.H., K.L., C.C., they all described to you that when the

1 defendant began engaging in sex with them, he stopped them  
2 from working as dancers. By doing that, he stopped them from  
3 earning money. And when they don't have money, they can't go  
4 get drugs anywhere else except from him.

5 And so by controlling whether the woman has the  
6 ability to work at his club, he controls their financial  
7 outcome. And when you exploit that, I suggest to you it's  
8 coercion.

9 It makes sense that fear of physical withdrawal  
10 symptoms is a form of serious harm. Think about the evidence,  
11 the testimony that you heard. It painted as clear a picture  
12 as possible of the hell of drug addiction. You heard what I  
13 submit to you is consistent, compelling, and testimony that  
14 you should find credible from numerous witnesses about the  
15 desperation that's associated with drug addiction.

16 And we're not even going to start with a victim,  
17 we'll start with Matt Albert. Matt Albert testified towards  
18 the end of the trial. He was an attorney that was addicted to  
19 cocaine and later crack cocaine. And I asked Matt Albert what  
20 it's like that go through withdrawals and what it's like to be  
21 a heavy drug addict.

22 And he was on cocaine, this is not opiates. He said  
23 it takes hold of you, it's progressive, it takes over your  
24 body and your mind, it's a painful process.

25 And what did he describe? He described crawling

1 around on the floor trying to smoke cat litter because he  
2 thought it might be crack. That's the coercive power of  
3 withdrawing from drugs, and that's cocaine.

4 P.H. described to you that withdrawing from opiates  
5 is like having the flu times 20. She told you, quote, I would  
6 do anything to avoid going through withdrawals.

7 P.H. testified, when you're going through  
8 withdrawals, all you can think about and care about is getting  
9 yourself unsick. It overcomes the person's world.

10 And you heard that from tons of witnesses in this  
11 trial.

12 We'll keep going, K.A. K.A. described how at a time  
13 in her life when she was spending 300 bucks a night on heroin  
14 and coke working at Pharaoh's, her choices were driven by  
15 addiction. She said she would go through severe withdrawals  
16 if she didn't have enough money to buy her drugs. K.A.  
17 testified that she would never have engaged in the sort of  
18 conduct that happened to her in the VIP Room with Wayne  
19 VanVleet today because she's not a drug addict anymore. It's  
20 simple.

21 A.A. was spending between 6- and \$900 a day just to  
22 feed her addiction and avoid withdrawals. She testified to  
23 you that she, quote, did not feel like she had a choice.

24 She testified in a raw, and I submit to you,  
25 authentic fashion, that today she views the conduct that

10:12AM 1 happened in the VIP Room as disgusting. She did it because  
10:12AM 2 she, quote, would do anything for drugs at that time. She  
10:12AM 3 told you she needed a minimum of two fentanyl patches to smoke  
10:12AM 4 every day just to avoid getting sick, and those cost \$250  
10:12AM 5 each.

10:12AM 6 R.W. testified to you about what drug addiction is  
10:12AM 7 like. She said when you're addicted, addiction takes control  
10:12AM 8 of your decisionmaking.

10:12AM 9 L.L. She testified about what physical withdrawals  
10:12AM 10 from opiates are like. Here's what she said. Hot and cold  
10:12AM 11 flashes. Really, really restless. Can't sit down, can't lay  
10:12AM 12 down, can't get up. Aches and pains, diarrhea, throwing up,  
10:13AM 13 can't eat. Like the flu times ten. She said withdrawals were  
10:13AM 14 a lot worse than when she had COVID. She described it as a  
10:13AM 15 sickness and a pain that she feared.

10:13AM 16 It was something that she testified that she wanted  
10:13AM 17 to avoid at all costs. And I think this quote sums up that  
10:13AM 18 testimony best: L.L. said, I would have done anything not to  
10:13AM 19 feel that way, and that's what I did.

10:13AM 20 And the reason why we're here? The reason why we're  
10:13AM 21 talking about this? Is because this defendant, he knew, he  
10:13AM 22 knew the coercive power of drug addicts trying to avoid  
10:13AM 23 withdrawals.

10:13AM 24 Think about the admission that he made to Kevin  
10:13AM 25 Hughes in the context of having sex with women. He said,

10:13AM 1 quote, you'll be surprised what they do for a little bit of  
10:13AM 2 product. His words.

10:13AM 3 Any doubt, based upon what you know about this  
10:14AM 4 defendant, from the testimony you heard in that witness stand  
10:14AM 5 that those words came out of his mouth waiting to come to this  
10:14AM 6 trial? He knew. He did it on purpose. He preyed upon drug  
10:14AM 7 addicts and their drug addictions so that he could get rich  
10:14AM 8 off their bodies, so that he could get sexual gratification  
10:14AM 9 for himself whenever he wanted it. That was this defendant's  
10:14AM 10 choice.

10:14AM 11 What you learned about the drug-addicted women that  
10:14AM 12 worked at Pharaoh's that were engaging in commercial sex  
10:14AM 13 there, whether in the upstairs or in the VIP area, is that  
10:14AM 14 they were susceptible and vulnerable to coercion because they  
10:14AM 15 were drug addicts. These women were struggling with what  
10:14AM 16 they've described to you in detail that I couldn't match about  
10:14AM 17 the horror of that drug addiction, desperate for money,  
10:14AM 18 desperate for drugs to stave off withdrawals for another few  
10:15AM 19 hours. They were especially susceptible to coercion.

10:15AM 20 And thankfully, the law tells you that you can  
10:15AM 21 consider the special vulnerabilities, the specifics of an  
10:15AM 22 individual, the special vulnerabilities that exist. And I  
10:15AM 23 submit to you that in this case, the victims were especially  
10:15AM 24 vulnerable because they were heavily addicted to cocaine and  
10:15AM 25 opiates.

10:15AM 1           The sex-trafficking conduct in this case falls into a  
10:15AM 2 few different buckets, a few different categories.

10:15AM 3           The first bucket that we'll talk about is the  
10:15AM 4 defendant directly coercing women to engage in commercial sex  
10:15AM 5 upstairs.

10:15AM 6           The second is the business model in the downstairs  
10:15AM 7 VIP area, knowing and recklessly disregarding the fact that  
10:15AM 8 women would be coerced, and sometimes forced, to engage in sex  
10:15AM 9 acts in the VIP with high-paying customers.

10:15AM 10          And the third bucket will be the defendant  
10:15AM 11 coordinating with others like Darryl LaMont and Jessica  
10:16AM 12 Leyland to essentially exchange women to traffic between their  
10:16AM 13 companies.

10:16AM 14          Let's stay on that first category, the upstairs at  
10:16AM 15 Pharaoh's.

10:16AM 16          We'll start with -- we'll start with G.R.

10:16AM 17          The defendant preyed upon G.R. during the darkest and  
10:16AM 18 most vulnerable time in her life. And you saw her today. You  
10:16AM 19 saw what she's like -- well, not today, but you saw her two  
10:16AM 20 months ago. You saw what she's like now. But she described  
10:16AM 21 for you what that time in her life was like when she was  
10:16AM 22 heavily addicted to opiates.

10:16AM 23          Picture her for a second at that time. Thin, I think  
10:16AM 24 she said she was 20 or 30 pounds less than she weighs today,  
10:16AM 25 and I don't know where she would have that to lose, but she

1 described how heavily addicted she was.

2 When you have that picture in your mind, think now  
3 what choice did this defendant make when he was confronted  
4 with G.R. in that incredibly vulnerable time in her life? You  
5 want to talk about choices? Let's talk about his choices.

6 He doesn't choose to say, hey, G.R., why don't you go  
7 to drug addiction treatment? Go to rehab. I'll hold your job  
8 for you.

9 That's not what he did.

10 He doesn't choose to ignore her and leave her  
11 downstairs on the floor, dancing and getting high and whatever  
12 else she's doing. He doesn't choose to fire her and say,  
13 G.R., get out of the club you're a drug addict. No. What  
14 choice does this defendant make? He chooses to prey on her  
15 vulnerability to find a way to make it benefit him. That's  
16 what he was about.

17 Knowing G.R. was desperate, desperate for money,  
18 desperate for drugs, he brings her upstairs to his private  
19 area with his private guests, people he wants to impress. He  
20 gives her a taste, a little cocaine. And then he tells her,  
21 go in the bathroom with my buddy, take care of him, and I'll  
22 take care of you.

23 He didn't pick G.R. by accident. It wasn't eeny  
24 meeny miny moe downstairs at Pharaoh's. He picked her on  
25 purpose, because he knew she was a drug addict. She was

1 friends with the woman he was engaged in sex with at the time,  
2 K.L., they were both heavily addicted, and you know he knew.

3 So he picks G.R. He offers her money to feed her  
4 addiction. Money he knows she can't turn down. Take care of  
5 my friend and I'll take care of you.

6 Now, you might hear something later after I sit down,  
7 you might hear, oh, all they did was make her an offer. All  
8 he did was make her an offer.

9 You know better. You know what he did was make her  
10 an offer he knew she couldn't refuse. She had a \$350-a-day  
11 drug habit. She was compelled, driven, coerced by this  
12 defendant to have sex for money, something she had never done  
13 before.

14 Over the course of a year, a \$350-a-day drug habit, I  
15 used a calculator, \$127,000. That's how much G.R. was  
16 spending approximately on drugs at that time in her life. He  
17 knew exactly what would happen when he told her he would give  
18 her drugs and money in exchange to go have sex with someone.  
19 He knew she couldn't say no.

20 So for the first time in her life she does it.

21 Think about the coercive atmosphere that existed in  
22 that moment. The defendant's her employer. This job is the  
23 way she makes money to be able to buy \$127,000 worth of drugs  
24 a year. The job that she has is the only means that she has  
25 to make money to feed her addiction at that time, the only way

10:19AM 1 to stop from getting dope sick. And he controls whether she  
10:19AM 2 keeps the job or not.

10:20AM 3 On top of that, in the back of her mind, she told you  
10:20AM 4 is the fact that she thinks he has mob ties. Those were her  
10:20AM 5 words. And I suggest to you that that adds to the coercive  
10:20AM 6 atmosphere. All that matters is that it was in her head at  
10:20AM 7 the time. She told you, heavily addicted to drugs, upstairs  
10:20AM 8 in this private area with a locked door that he controls.

10:20AM 9 All of that combined together created a coercive  
10:20AM 10 atmosphere that G.R. couldn't overcome. And whose fault is  
10:20AM 11 it? It's his fault. It was his choice. He set it up that  
10:20AM 12 way on purpose.

10:20AM 13 And G.R.'s corroborated. K.L. testified that after  
10:20AM 14 that happened, the defendant told her about it. He told her,  
10:20AM 15 I gave K.L. -- I gave G.R. \$300 to have sex with Aaron  
10:20AM 16 LaMarca's son, or whoever it was, she described the person,  
10:20AM 17 someone he wanted to impress.

10:21AM 18 While we're on the subject of K.L., let's talk about  
10:21AM 19 what he did to her. 'Cuz, you know, the defendant didn't just  
10:21AM 20 oversee this, he didn't just direct dancers to go and engage  
10:21AM 21 in commercial sex with others, he got his hands dirtier than  
10:21AM 22 that. Let's talk about K.L. and his choices with respect to  
10:21AM 23 K.L.

10:21AM 24 This defendant chose to give K.L. opiates for the  
10:21AM 25 first time when she said she had a headache. He didn't have

10:21AM 1 to do that. His choice.

10:21AM 2 This defendant chose when K.L. was dependant on those  
10:21AM 3 drugs, when she was addicted to them, when she got physically  
10:21AM 4 sick, the flu times 10, the flu times 20, any time she didn't  
10:21AM 5 have those drugs, what did this defendant choose to do when  
10:21AM 6 she would come upstairs and ask for them? When she went  
10:21AM 7 upstairs and she said, hey, I'm going through withdrawals, can  
10:21AM 8 I get some Lortabs, what was this defendant's choice?

10:22AM 9 Did he give them away? Sure, K.L., here's some  
10:22AM 10 Lortabs go back downstairs. No.

10:22AM 11 Did he tell her, hey, K.L., you should go to rehab,  
10:22AM 12 get some treatment. Opiate addiction is dangerous. You're  
10:22AM 13 gonna mess your life up. No.

10:22AM 14 The defendant's choice was to tell K.L., you know  
10:22AM 15 what you have to do. And then zipped down his pants and put  
10:22AM 16 his penis in her mouth. That was his choice, not hers. No  
10:22AM 17 one else's, Peter Gerace's choice, when K.L. was heavily  
10:22AM 18 addicted, scared of withdrawals, was to try to get a blow job  
10:22AM 19 out of it for himself. And that's what he got, because she  
10:22AM 20 wasn't gonna say no.

10:22AM 21 Do any of you sitting there for a second think that  
10:22AM 22 K.L. in that moment, fiending -- fearing physical withdrawals,  
10:22AM 23 had a choice of turning down putting his penis in her mouth?  
10:22AM 24 No.

10:23AM 25 What you have to do. His words.

10:23AM 1           Imagine for a second -- excuse me. Imagine for a  
10:23AM 2 second that K.L. wasn't a drug addict. Just follow me for a  
10:23AM 3 second. Imagine K.L.'s not a drug addict and she's a  
10:23AM 4 diabetic. And imagine she doesn't work at a strip club, she  
10:23AM 5 works at, you know, an office job. Imagine she's at work, and  
10:23AM 6 she's going through diabetic shock. She starts to feel the  
10:23AM 7 symptoms, she's dizzy, she nauseous, she feels like she's  
10:23AM 8 going to lose consciousness. She's scared. And in that  
10:23AM 9 moment, imagine she thinks to herself, I know my boss Peter  
10:23AM 10 has insulin upstairs. And she walks upstairs, diabetic K.L.,  
10:23AM 11 and she says, hey, Peter, I'm going through diabetic shock,  
10:23AM 12 I'm scared, I feel dizzy, I'm nauseous, I think I might pass  
10:24AM 13 out. Can I have some of your insulin?

10:24AM 14           And imagine in that moment that her boss said, you  
10:24AM 15 know what you have to do, and then stuck his penis in her  
10:24AM 16 mouth. That's coercion. That's conduct that would turn your  
10:24AM 17 stomach. And it's no different than what he did.

10:24AM 18           I submit to you it makes no difference if she's  
10:24AM 19 physically dependant on opiates, or if she's physically  
10:24AM 20 dependant on insulin.

10:24AM 21           If you know that that's what's happening to a person,  
10:24AM 22 and then you choose to withhold what they need to avoid going  
10:24AM 23 through serious harm so that you can get a blow job, that's  
10:24AM 24 coercion.

10:24AM 25           He preyed upon K.L.'s drug addiction the same way he

1 preyed upon G.R.'s. And like I talked about how K.L.  
2 corroborated what happened to G.R., K.L. is corroborated by  
3 what happened to L.L., years apart. Years apart. This  
4 defendant engaged in essentially the exact same contact with  
5 L.L. Let's talk about that.

6 L.L. described for you in raw detail how she engaged  
7 in sex and sex acts in exchange for cocaine, and opiates, and  
8 money, and the combination of all that with this defendant,  
9 and his friends, one of his brothers. She described for you  
10 that that was at a time in her life when she was heavily  
11 addicted to heroin and cocaine, at a time when she was  
12 terrified of the pain of withdrawing from those substances, at  
13 a time in her life when she told you she would've done  
14 anything to avoid that.

15 What choice did Peter Gerace make? He chose to tell  
16 her, you know what I need, a special favor. When she's  
17 fiending for drugs, when she's going through withdrawals.  
18 That's his MO. He did the exact same thing to K.L. No  
19 discussion.

20 The first time -- think about K.L. described for you  
21 the first time it happened. She told you she went upstairs,  
22 he gave her cocaine, and with no words at all he pulled his  
23 pants down. And she testified that she knew what she had to  
24 do in that moment.

25 Weeks later, L.L. got on the witness stand and she

10:26AM 1 described the first time that it happened with this defendant.  
10:26AM 2 And what did she tell you? The exact same thing. Years  
10:26AM 3 apart, that happened.  
10:26AM 4 He gives her cocaine. With no words, with no  
10:26AM 5 discussion, he pulls his pants down. L.L. knew in that moment  
10:26AM 6 exactly what she had to do.  
10:26AM 7 The defendant gave her the drugs she needed, and he  
10:26AM 8 had sex with her.  
10:26AM 9 In the co -- in the coercive atmosphere that he  
10:27AM 10 created, he was her boss, he controlled her ability to earn a  
10:27AM 11 living. And that was just the first time. L.L. would go on  
10:27AM 12 to describe other occasions which she said were, quote, too  
10:27AM 13 many times to count, where she would be dope sick and she  
10:27AM 14 would go to him at work and ask for drugs. And the defendant  
10:27AM 15 would tell her, you have to give me a special favor. And he  
10:27AM 16 would make her suck on his penis, or he would put his penis in  
10:27AM 17 her vagina in exchange for the drugs.  
10:27AM 18 She testified to you, she showed you in this  
10:27AM 19 courtroom the physical effects of shooting heroin and cocaine  
10:27AM 20 into her arms and legs so many times her veins literally  
10:27AM 21 collapsed.  
10:27AM 22 She goes up there and asks him for drugs, and what  
10:27AM 23 choice does he make? He chooses to brutally victimize her, to  
10:27AM 24 treat her like she was property, to treat her like she was  
10:28AM 25 less than human.

10:28AM 1 And the defendant didn't just do it himself with  
10:28AM 2 L.L., he sent her upstairs with his friends and his brother.  
10:28AM 3 And how do you think they knew? Let's talk about that.  
10:28AM 4 You think Aaron LaMarca and David Gerace, his  
10:28AM 5 brother, just picked L.L.'s name out of a hat to say, hey,  
10:28AM 6 want to go upstairs and party? I'll give you some drugs.  
10:28AM 7 Of course not. He told them.  
10:28AM 8 He told them if you give L.L. some drugs, you can  
10:28AM 9 make her have sex with you. I submit to you that's an obvious  
10:28AM 10 inference you should draw. They weren't randomly selecting  
10:28AM 11 dancers and getting lucky. This defendant, who had already  
10:28AM 12 been doing it himself, passed her off, he pimped her out. It  
10:28AM 13 doesn't matter if it happens on a street corner, in a crack  
10:28AM 14 house, or in a club with a neon sign. He pimped her out to  
10:28AM 15 his friends, he pimped her out to his brother, he pimped her  
10:28AM 16 out to himself. That's the choice he made.  
10:29AM 17 **MR. COOPER:** Do you have time?  
10:29AM 18 **MR. TRIPI:** 43 left.  
10:29AM 19 **MR. COOPER:** Okay.  
10:29AM 20 And let's talk about when the defendant doesn't get  
10:29AM 21 what he wants. You have to look no further than the testimony  
10:29AM 22 of A.G. She wasn't addicted to heroin or crack. She was  
10:29AM 23 working at Pharaoh's for two days. She was making a ton of  
10:29AM 24 money, she told you guys she seemed -- she said I was a  
10:29AM 25 ringer, I did 13 Champagne Rooms in one night, made a ton of

10:29AM 1 money.

10:29AM 2 The second day she works there, this defendant goes  
10:29AM 3 over to her and says, hey, Barbie, I heard you're doing great,  
10:29AM 4 you're killing it. She's like, thanks. He tries to get her  
10:29AM 5 to drink, she's underage. She says no. He tries again. She  
10:29AM 6 continues to say no.

10:29AM 7 And then later he goes over to Barbie, A.G., and he  
10:29AM 8 has two women with him, and he says, hey, Barbie, let's go  
10:30AM 9 upstairs and party.

10:30AM 10 You remember her. She was short. She said, no, I'm  
10:30AM 11 good. She had, like, a mousy little voice. No, I'm good.

10:30AM 12 And he offers her again, hey, why don't we go  
10:30AM 13 upstairs and party? No, I'm good.

10:30AM 14 What happened to A.G.? She shows up for work day  
10:30AM 15 three. She's met at the door. You're fired.

10:30AM 16 Every single one of you sitting in this room knows  
10:30AM 17 what happened there.

10:30AM 18 She's making the club a lot of money, she's doing  
10:30AM 19 great, she's not a drug user. She certainly wasn't fired for  
10:30AM 20 drug use. He tries to invite her upstairs, which she  
10:30AM 21 described as I thought he was going to give me drugs and try  
10:30AM 22 to have sex with me, and I didn't want to have anything to do  
10:30AM 23 with that, and the next day she's gone. That's the coercive  
10:30AM 24 power of being the boss.

10:30AM 25 Let's talk about the VIP Room sex trafficking. The

1 defendant set up his business to profit off of the  
2 victimization of drug-addicted dancers, plain and simple. He  
3 knew and he recklessly disregarded the fact that women were  
4 coerced with their drug addictions to engage in commercial sex  
5 in the VIP Room, and he got rich from it. Let's cover all the  
6 different evidence, all of the testimony.

7 G.R. said in the VIP Room men would touch her vagina  
8 and kiss her body. She said she observed another dancer  
9 having sexual intercourse in the back. She said on one  
10 occasion while in the VIP Room a man masturbated and  
11 ejaculated on her while she was dancing on him, no one  
12 intervened, no one stopped that, she told you the club made a  
13 lot of money from VIP dances.

14 C.B. told you sex acts occurred in the VIP area, and  
15 depending on who the dancers were, some of them would get away  
16 with it. That's consistent with what you heard from numerous  
17 witnesses about Peter having Peter's favorites. A.B. also  
18 told you about that.

19 E.H. described for you how the instructions she got  
20 when she started working at Pharaoh's were grind on him until  
21 he gets off. She testified -- testified about what happened  
22 to her when she worked there. You remember, I'm sure, she  
23 said that a man ejaculated on her and she was angry. She was  
24 angry about it when it happened. And I think she was still  
25 angry about it when she was testifying about it here, and she

1 was pissed.

2 And she said she went outside to the VIP attendant  
3 and she said, hey, look at the cameras. Find out who that  
4 was. She's got his semen on her body, and that's not what she  
5 signed up for.

6 And they didn't care. They tell -- they tell her go  
7 away.

8 For this defendant, that's the business model. What  
9 kind of customer service would it be to go get the guy in  
10 trouble? Come on, he's spending money here. That's how he  
11 set it up.

12 E.H. put it pretty well. She said I worked at  
13 Pharaoh's, they protect the patrons, not the girls, not the  
14 women, is what she said.

15 For this defendant, that kind of conduct was a way  
16 for him to live in a nice fancy mansion, and buy sports  
17 memorabilia, and have cash on hand to pay bribes to judges and  
18 corrupt DEA agents. Business model.

19 K.A. told you about her experiences in the VIP area.  
20 She described that men touched her bare vagina, tried to and  
21 did insert fingers into her bare vagina, and exposed their  
22 penises to her.

23 She described her encounters with Wayne VanVleet.  
24 She described them as, quote, too many to count. She said  
25 Wayne came into Pharaoh's multiple times per week, he spent a

1 lot of money.

2 And you know that money ended up in this defendant's  
3 pockets.

4 Wayne would buy large blocks of time in the VIP. He  
5 would tip the attendant extra. This is all what K.A.  
6 described in her testimony. And then he would attempt to  
7 finger her and touch her bare vagina.

8 She explained in graphic detail how Wayne would,  
9 quote, force -- force, where have we heard that before, force  
10 her body down on his erect penis until he ejaculated on  
11 himself.

12 K.A. testified that she didn't enjoy what was  
13 happening in the back with Wayne, but she needed the money in  
14 order to buy heroin that she was heavily addicted to. She  
15 testified she was high on cocaine and heroin every single time  
16 Wayne did that to her in the back.

17 She testified to you that she was covered in track  
18 marks, those bruises, those collapsing veins in her body from  
19 drug use. It was obvious that she was addicted to drugs. It  
20 was recklessly disregarded. No one cared. She was making  
21 money, that's all that mattered.

22 K.A. testified that it didn't just happen to her,  
23 other dancers were brought back there with Wayne. All drug  
24 addicts, every one of them that K.A. described. L.L., Kiera.  
25 She told you they're drug addicts just like her.

10:35AM 1 He knew. This defendant knew, the VIP attendant's  
10:35AM 2 getting tipped to look the other way. They knew.

10:35AM 3 Wayne VanVleet, up close and personal with a woman  
10:35AM 4 who's obviously heavily addicted to drugs, he knew. They're  
10:35AM 5 all coconspirators. They're all victimizing this young woman.

10:35AM 6 Wayne pays, this defendant gets a portion of the  
10:35AM 7 money, and K.A. she gets molested, and she gets to live with  
10:35AM 8 it forever. That's the business model.

10:35AM 9 It's not just her. Let's talk about A.A.

10:35AM 10 Do you remember Ms. A.A.? When I was direct -- doing  
10:35AM 11 a direct examination of Ms. A.A., we had this picture up and I  
10:35AM 12 started to ask her questions about it, and she paused and she  
10:36AM 13 said, can you please take the picture down? She couldn't even  
10:36AM 14 look at him. Who can blame her?

10:36AM 15 She testified about being so strung out, thin, dark  
10:36AM 16 eyes, hollow faced. She described how Wayne was a regular, he  
10:36AM 17 spent a lot of money in the VIP Room. She told you that Wayne  
10:36AM 18 would tip the VIP attendant, and then he would buy long blocks  
10:36AM 19 of time in that dark private area with her. She testified  
10:36AM 20 that Wayne would use force, the same thing that K.A. said,  
10:36AM 21 Wayne would use force to hold her body in place and try to rub  
10:36AM 22 her vagina.

10:36AM 23 She testified that the VIP attendants never once  
10:36AM 24 stopped him from doing that. She testified that they looked  
10:36AM 25 the other way.

10:36AM 1 Ms. A.A. told you that Wayne's other favorites in the  
10:36AM 2 club were L.L. and Megan. Same thing, I submit to you, that  
10:37AM 3 K.A. told you. Megan Stabler is a/k/a Kiera, it's her dancer  
10:37AM 4 name, it's corroboration. I submit to you that she told you  
10:37AM 5 L.L. and Kiera, Megan, were -- were both drug addicts, as  
10:37AM 6 well.

10:37AM 7 She provided what I submit to you is impactful,  
10:37AM 8 credible, and heartbreaking testimony that she didn't feel  
10:37AM 9 like she had a choice.

10:37AM 10 She described another customer who inserted his  
10:37AM 11 fingers into her vagina, and you'll remember I'm sure that  
10:37AM 12 testimony. She said, I kept looking to the cameras. I kept  
10:37AM 13 looking to the cameras for help when that was happening, but  
10:37AM 14 no one came.

10:37AM 15 She described how VIP attendants would encourage me  
10:37AM 16 to go to certain customers, just like this defendant did, by  
10:37AM 17 the way, with L.L. for Wayne. Business model. They would  
10:37AM 18 encourage her to go to certain customers.

10:37AM 19 And here's what she said, and then they would come  
10:37AM 20 looking for a bigger tip afterwards. Disgusting. Predatory  
10:37AM 21 business model designed to make money off of the molestation  
10:37AM 22 of drug-addicted women.

10:38AM 23 And C.H. corroborated all this. She testified that  
10:38AM 24 she would see Wayne VanVleet lick dancers' faces and grab  
10:38AM 25 them. She would see him tipping off the VIP attendants. And

10:38AM 1 you know exactly what those tips were for.

10:38AM 2 You know the defendant knew what was happening. And  
10:38AM 3 that's important. You know he recklessly disregarded it at a  
10:38AM 4 minimum, but you know he knew 'cuz he told L.L., he told her  
10:38AM 5 what was gonna happen with Wayne, and he said Brian will look  
10:38AM 6 the other way, all part of an agreement to get rich off these  
10:38AM 7 women. Kept whales like Wayne spending money at the club.

10:38AM 8 A.B. She testified that she observed sex acts in the  
10:38AM 9 VIP area, and she described dancers that were engaging in  
10:38AM 10 those sex acts as Peter's favorites. Huh, I wonder what made  
10:38AM 11 them Peter's favorites? You know.

10:38AM 12 She told you that the same dancers that would tip the  
10:39AM 13 VIP attendants and managers, those same dancers would tip them  
10:39AM 14 extra money, the VIP attendants and the managers.

10:39AM 15 Ms. A.B. also testified that this defendant, Peter  
10:39AM 16 Gerace, he would direct dancers to his friends or big spenders  
10:39AM 17 in the VIP area. That's his role in the sex-trafficking  
10:39AM 18 conspiracy. He directed it to happen, because it made him a  
10:39AM 19 lot of money.

10:39AM 20 If you remember when Ms. A.B. was being  
10:39AM 21 cross-examined, they tried to suggest to her, like, hey, Brian  
10:39AM 22 was supposed to, like, be watching the cameras, he was gonna  
10:39AM 23 stop that if it happened. And she said, just because he was  
10:39AM 24 responsible for something doesn't mean he actually followed  
10:39AM 25 through with it. Brian looked the other way for tips.

10:39AM 1 She wasn't gonna get told what to say. She lived it.  
10:39AM 2 You know that's how this defendant set up his business model.  
10:39AM 3 Ms. A.B. told you.  
10:39AM 4 This was really, I submit to you, this is really  
10:40AM 5 crucial testimony. A.B. told you that in conversations with  
10:40AM 6 this defendant, he would refer to the VIP Room as "the bank."  
10:40AM 7 The bank. The bank.  
10:40AM 8 So, sure, at his trial, they can come up here and  
10:40AM 9 say, oh, alcohol sales, guys. Making money selling drinks.  
10:40AM 10 But outside the courtroom? Before the indictment,  
10:40AM 11 talking to A.B., he tells her the VIP Room is the bank.  
10:40AM 12 L.L., in addition to K.A. and A.A., L.L., she offered  
10:40AM 13 you direct evidence, direct proof that this defendant knew  
10:40AM 14 what was going on in the back with Wayne and others.  
10:40AM 15 All the sex trafficking that we just discussed was  
10:40AM 16 part of a larger conspiracy, a larger agreement between more  
10:40AM 17 than one person, right, two or more people, an agreement to  
10:41AM 18 engage in that conduct.  
10:41AM 19 The law doesn't require that we identify all the  
10:41AM 20 coconspirators to you. The judge will teach you that. But  
10:41AM 21 let's discuss for a minute some of other people that were  
10:41AM 22 involved in this agreement to commit sex trafficking, to  
10:41AM 23 coerce women to have sex in exchange for a thing of value,  
10:41AM 24 drugs and money.  
10:41AM 25 The defendant conspired with Wayne VanVleet. Whether

10:41AM 1 they ever talked to each other or not, doesn't matter. The  
10:41AM 2 judge will tell you they don't need to know each other.  
10:41AM 3 They're working together for the same purpose. Wayne's  
10:41AM 4 getting something out of it, Peter's getting something out of  
10:41AM 5 it.

10:41AM 6 The defendant conspired with Brian Rosenthal and  
10:41AM 7 other VIP attendants who took what amount to bribes to look  
10:41AM 8 the other way while men like Wayne VanVleet fingered and  
10:41AM 9 molested drug-addicted women in the VIP Room.

10:41AM 10 The defendant conspired with johns, the consumers of  
10:41AM 11 the commercial sex that he got rich selling.

10:41AM 12 He conspired with drug dealers that supplied the  
10:42AM 13 addicted dancers with the drugs, because without them, the  
10:42AM 14 sex-trafficking business was going to grind to a halt. So the  
10:42AM 15 drug dealers are all a part of this conspiracy.

10:42AM 16 And then we get -- let's go -- let's go to Doug  
10:42AM 17 Augustyniak for a second. Do you remember Doug?

10:42AM 18 I submit to you it was pretty clear from the minute  
10:42AM 19 that I started asking him questions that Doug was a hostile  
10:42AM 20 witness. Doug, who was -- worked as a VIP attendant, who's  
10:42AM 21 good friends with Brian Rosenthal and with this defendant.  
10:42AM 22 Doug had something to hide.

10:42AM 23 When Mr. Foti started asking him questions, Doug was  
10:42AM 24 a sweet baby angel. Do you remember? They didn't have any  
10:42AM 25 trouble. Doug was doing great on cross-examination. When I

1 was up there asking questions, Doug was aggressive. And it  
2 should be no surprise to you, he blurted out during the direct  
3 examination that he didn't like me and the government. I  
4 don't care. What matters is that Doug testified to you about  
5 something that I think, I submit to you, you should find  
6 credible.

7 He was locked in in grand jury, and Doug Augustyniak  
8 came in here and he told you that when a dancer was overdosing  
9 downstairs, after she had been upstairs in this defendant's  
10 private area partying with him and his friends, she came  
11 downstairs and she overdosed. And what did he tell you? He  
12 didn't call 911. He didn't call the police while this woman  
13 was in medical distress.

14 Who did he call? His coconspirator, Peter.

15 Doug didn't want the police coming. I submit to you  
16 Doug didn't want the police sniffing around the club. The  
17 club, the drug dealing, the sex trafficking, that was how this  
18 defendant and Doug and Brian made a living. He tried to look  
19 you in the face and say I tried to prevent sex acts from  
20 happening in the VIP area.

21 You know better. When you consider whether that  
22 testimony was credible, consider in comparison to the  
23 testimony from the witness after witness the victims who came  
24 in here and described the disgusting things that happened to  
25 them. Doug had something to hide.

10:44AM 1           Do you think Doug wants to come in here and say,  
10:44AM 2 yeah, I looked the other way in exchange for money? Totally.  
10:44AM 3           Doug wasn't just ignoring it, Doug was profiting from  
10:44AM 4 it. He told you customers like Wayne would come in and, oh,  
10:44AM 5 yeah, they'd give us tips, they'd give us tips. Sure.  
10:44AM 6           Well, Doug, what were they giving you a tip for?  
10:44AM 7           Doug wasn't going in the back. Wayne wasn't licking  
10:44AM 8 Doug's face. He wasn't rubbing Doug's groin. He wasn't  
10:44AM 9 ejaculating on Doug. So why is Doug getting a tip? Hmm, I  
10:44AM 10 wonder. Maybe it's consistent with the testimony of all the  
10:44AM 11 victims that testified that Doug was getting tipped so he'd  
10:44AM 12 let it happen.  
10:44AM 13           So whether he comes in here and admits it or not, you  
10:44AM 14 know what happened. Doug was getting a cut.  
10:44AM 15           His demeanor, his attitude on the witness stand, tell  
10:44AM 16 you everything you need to know about him. To Doug, the  
10:45AM 17 victims in this case are a dime a dozen.  
10:45AM 18           When I asked him to describe the woman who was  
10:45AM 19 overdosing, like, you know, I was -- what I meant was like  
10:45AM 20 describe the symptoms. I said, hey, describe her. He said  
10:45AM 21 oh, I don't know, it was just some girl.  
10:45AM 22           Just some girl. That's what -- that's what the  
10:45AM 23 victim who's overdosing is to Doug. That's how he thinks. A  
10:45AM 24 dime a dozen. Couldn't care less about what happened to them  
10:45AM 25 in the VIP Room. All he cared about was the money that was

1 coming in.

2 And think about who he's loyal to. Don Parrino fired  
3 Doug. And who brought him back? Peter.

4 If the argument is made to you, if the argument gets  
5 made to you today, or what do you expect, come on, they're  
6 strippers, listen real carefully when Judge Vilardo instructs  
7 you on the law. Listen carefully. I submit to you he's not  
8 gonna say, hey, it's okay to coerce a woman into commercial  
9 sex if she's a stripper. Who cares?

10 Not the law in this country. Reject that argument if  
11 it's made to you.

12 The facts provided to you by the dozens of witnesses  
13 who lived it, the victims who still live it, prove that  
14 Pharaoh's wasn't a strip club, it was a brothel with a neon  
15 sign and a liquor license.

16 The defendant isn't some persecuted business owner.  
17 Like Rebecca Bender told you, he's a CEO pimp and a Romeo  
18 pimp, it doesn't matter that he doesn't wear a purple jacket  
19 or a fur hat.

20 That's not in the law.

21 The same rule of laws apply to everyone in this  
22 country. Doesn't matter where you're from, doesn't matter if  
23 you have a corrupt DEA agent friend who thinks he can create a  
24 two-tiered system of justice for you. The same rules of law  
25 apply to everyone.

10:47AM 1           The fact that the defendant hung out with lawyers and  
10:47AM 2 judges and cops, who cares? He cared. I submit to you, you  
10:47AM 3 shouldn't. It doesn't change the facts.

10:47AM 4           Doing coke with Buffalo Sabres in the upstairs at  
10:47AM 5 your club doesn't mean you're not engaged in sex trafficking  
10:47AM 6 because the people might be famous. That's not in the law.

10:47AM 7           Listen carefully when he gives you the law, apply the  
10:47AM 8 facts as you decide them, and employ a simple formula: The  
10:47AM 9 facts plus the law equals the verdict. That's it.

10:47AM 10          I don't think we need to spend too much more time on  
10:47AM 11 this, the third element, we've covered coercion in detail.

10:47AM 12 Commercial sex act, doesn't have to be vaginal intercourse,  
10:47AM 13 right? Sticking your fingers inside of a woman's anus or  
10:47AM 14 vagina, kissing a woman's bare breasts, rubbing a woman's  
10:48AM 15 vagina, all commercial sex acts in this case. It doesn't have  
10:48AM 16 to be the oral sex or vaginal sex that you've heard described.  
10:48AM 17 And those things happened in the VIP Room. But even the  
10:48AM 18 rubbing of a woman's bare vagina, that's a commercial sex act  
10:48AM 19 in the context of this case.

10:48AM 20 Ejaculating on a woman's body when she's dancing is a  
10:48AM 21 sex act. They're all done in exchange for a thing of value.

10:48AM 22 So that third element, commercial sex act, check.

10:48AM 23 The fourth element, interstate or foreign commerce, I  
10:48AM 24 expect the judge is gonna tell you that's de minimis, you just  
10:48AM 25 have to find that there's some -- some hook to interstate,

1 some interstate nexus. Did the act -- did the activity have a  
2 minimal effect on interstate commerce? Of course it did.  
3 They're selling alcohol. The alcohol is not all made in  
4 New York, right? They have a website. The website effects  
5 interstate commerce.

6 Maybe most importantly, they bring dancers in from  
7 all over. You heard multiple witnesses testify to that.

8 Dancers come from other states, they come from Canada. That  
9 effects interstate or foreign commerce.

10 And finally, drugs. You know by now drugs are an  
11 integral part of that business, an integral part of the way he  
12 ran that business. And cocaine doesn't come from New York.  
13 Heroin doesn't come from New York. No one's growing heroin in  
14 their backyard, poppy, whatever, that's not happening. Those  
15 are things that effect interstate commerce.

16 So that one, you know, fourth element, check.

17 It was also, this was spurred on by people like  
18 Darryl LaMont and Jessica Leyland, so that's part of the  
19 conspiracy. You don't have to find -- you pick how, you know,  
20 how the conspiracy existed. You pick who was involved. But I  
21 submit to you that Darryl LaMont and Jessica Leyland, when  
22 they trafficked woman back and forth with Pharaoh's, were  
23 engaged in that same conspiracy. They all knew.

24 This defendant, he knew what was going on at Darryl  
25 LaMont's company. You know he knew. There's evidence of his

1 knowledge that sex acts were going on. You heard it from R.W.  
2 that there's evidence of it.

3 So first we have pictures, right? Who are some of  
4 the people in common? Shelby on the left, who this defendant  
5 trafficked to Judge Michalski, his buddy, so that the judge  
6 would be corrupt for him.

7 Look at these text messages. They're a little bit  
8 distorted here. 310AS. Peter says to Darryl LaMont, you took  
9 one of my best weekend girls -- because they shared  
10 employees -- and LaMont tells him, yeah, and she does anal.

11 Any question about whether the defendant knew LaMont  
12 was having the women engage in sex acts? Any doubt? No.

13 Jessica Leyland. Katrina Nigro told you Jessica  
14 Leyland had an arrangement with the defendant. She would send  
15 the women from Extraordinaire, her stag company, to Pharaoh's  
16 to work, and the defendant would let her sell drugs there.  
17 That's part of the agreement, they both have a stake. She's a  
18 member of the sex-trafficking conspiracy.

19 So three buckets of that activity, we covered all of  
20 three of them. Upstairs, VIP area, and the -- the exchanging  
21 of women with -- with those other stag companies that we  
22 discussed. I submit to you all three buckets in this case  
23 have been proven to exist, proven beyond a reasonable doubt.

24 But even if you find only that the upstairs was sex  
25 trafficking, still guilty. Even if you find, hey, only the

1 downstairs VIP area where -- where there was force, where  
2 Wayne was physically forcing women onto his erect penis, still  
3 sex trafficking, still a sex-trafficking conspiracy.

4 So I've presented three buckets to you. You pick any  
5 or all of them, I submit to you they've all been proven beyond  
6 a reasonable doubt.

7 Conspiracy to commit sex trafficking by coercion, the  
8 second bucket of proof in this case, find him guilty of  
9 Count 5 because his choices, over and over again, the choices  
10 he made make him guilty of Count 5.

11 **MR. COOPER:** Judge, I think it's a good time to take  
12 that break, please.

13 **THE COURT:** Okay, folks, we'll take our mid-morning  
14 break now. Please remember my instructions. Don't talk about  
15 the case, even with each other, and don't make up your mind  
16 just yet. Come back at 11:00 and we'll continue.

17 (Jury excused at 10:52 a.m.)

18 **THE COURT:** Okay. Anything for the record before we  
19 break?

20 **MR. COOPER:** No, thank you.

21 **MR. FOTI:** No, thank you.

22 **THE COURT:** I've got you at 1:40.

23 **MR. COOPER:** That's what Joe has also.

24 **MR. TRIPI:** Yeah, 1 hour and 20 remain, yep.

25 **THE COURT:** 1 hour and 20 remain. Yeah, great.

10:52AM 1 Thank you. We'll be back -- let's try keep it close to 11:00,  
10:53AM 2 please.

10:53AM 3 **MR. COOPER:** Perfect.

10:53AM 4 **THE CLERK:** All rise.

10:53AM 5 (Off the record at 10:53 a.m.)

11:02AM 6 (Back on the record at 11:02 a.m.)

11:02AM 7 (Jury not present.)

11:02AM 8 **THE CLERK:** All rise.

11:02AM 9 **THE COURT:** Please be seated.

11:02AM 10 **THE CLERK:** We are back on the record for the  
11:02AM 11 continuation of the jury trial in case numbers 19-cr-227 and  
11:02AM 12 23-cr-37, United States of America versus Peter Gerace Jr.

11:02AM 13 All counsel and parties are present.

11:02AM 14 **THE COURT:** Okay. Ready to go?

11:02AM 15 **MR. COOPER:** Yes.

11:02AM 16 **THE COURT:** Ready to go?

11:02AM 17 **MR. FOTI:** Yes.

11:02AM 18 **THE COURT:** Okay. Can we let Pat know?

11:06AM 19 We're ready, Pat.

11:06AM 20 **OFFICER CORONA:** Very good.

11:07AM 21 (Jury seated at 11:07 a.m.)

11:08AM 22 **THE COURT:** The record will reflect that all our  
11:08AM 23 jurors, again, are present. You may continue.

11:08AM 24 **MR. COOPER:** Thanks, Judge.

11:08AM 25 So, one last thing to keep in mind that I forgot, and

11:08AM 1 we have a lot to talk about so I'm going to try to hit it  
11:08AM 2 quick, but on the topic of maintaining a drug-involved  
11:08AM 3 premises and sex trafficking. I didn't talk at all about  
11:08AM 4 nodding out. And you heard so many witnesses talk about  
11:08AM 5 nodding out at the club.

11:08AM 6 And a bunch of different witnesses testified to you  
11:08AM 7 that they themselves would nod out all over the place: On the  
11:08AM 8 floor, at the bar, in the dancing dressing room, in the VIP  
11:08AM 9 area. It was happening all over the place. And so that's  
11:08AM 10 just one final point I wanted to make sure I hit with you on  
11:08AM 11 how you know that he knew that drugs were being used  
11:09AM 12 everywhere all the time, because dancers were constantly  
11:09AM 13 nodding out. It's another way that you know the defendant  
11:09AM 14 knew that these women were heavy drug addicts at the time that  
11:09AM 15 he was running his business.

11:09AM 16 And now we're on to the next category. We're right  
11:09AM 17 on schedule. We're going to talk about public corruption.

11:09AM 18 Count 1, like I told you earlier, is that conspiracy  
11:09AM 19 to defraud the United States. It charges the defendant with  
11:09AM 20 conspiring with Joseph Bongiovanni to defraud the United  
11:09AM 21 States between 2005 and February of 2019. We're going to talk  
11:09AM 22 about the elements of Count 1 now.

11:09AM 23 First, you're getting good at conspiracy by now I  
11:09AM 24 bet, that two or more persons entered an unlawful agreement  
11:09AM 25 charged in the indictment;

11:09AM 1                 Second, that the defendant knowingly and willfully  
11:09AM 2 became a member of that conspiracy;

11:09AM 3                 This count has a third element that one of the  
11:10AM 4 members of the conspiracy knowingly committed at least one  
11:10AM 5 overt act charged in the indictment; and

11:10AM 6                 Fourth, that the overt act that you find to have been  
11:10AM 7 committed was committed to further some objective of the  
11:10AM 8 conspiracy.

11:10AM 9                 Those are the four elements for Count 1.

11:10AM 10                 The first element, that two or more persons entered  
11:10AM 11 the unlawful agreement charged in the indictment.

11:10AM 12                 First thing we're gonna do is identify what is the  
11:10AM 13 unlawful agreement charged in the indictment. I'm going to  
11:10AM 14 summarize it because the indictment is huge, we're not going  
11:10AM 15 to waste time.

11:10AM 16                 In sum, it's the unlawful agreement between former  
11:10AM 17 Special Agent Joseph Bongiovanni and Peter Gerace to have  
11:10AM 18 Bongiovanni be corrupt. That's the agreement. To have  
11:10AM 19 Bongiovanni protect Peter Gerace from law enforcement  
11:10AM 20 investigation, to shelter him from other law enforcement  
11:10AM 21 officers, and their illegitimate action.

11:10AM 22                 I submit to you that the corrupt agreement was  
11:11AM 23 designed on purpose to create a two-tiered system of justice,  
11:11AM 24 one for everyone else, and one for this defendant. It was a  
11:11AM 25 mutual understanding, spoken or unspoken, between Peter Gerace

11:11AM 1 and Joe Bongiovanni.

11:11AM 2 Let's talk about how we've proven that.

11:11AM 3 First, let's look at the relationship that we know  
11:11AM 4 they have, that you know they have, based upon the testimony  
11:11AM 5 and the evidence. They were incredibly close to each other.

11:11AM 6 Lou Selva told you that they grew up together, that  
11:11AM 7 they were friends since they were teenagers. They bar tended  
11:11AM 8 together in their early 20s. You know that Bongiovanni grew  
11:11AM 9 up in a -- in a neighborhood where he and Lou Selva described  
11:11AM 10 having an affinity looking up to people that they thought were  
11:11AM 11 in Italian Organized Crime. And you know that -- you've heard  
11:11AM 12 testimony that this defendant and his family have a reputation  
11:11AM 13 for being associated with that.

11:12AM 14 And that's important only because it's a reason why  
11:12AM 15 Bongiovanni had a -- had a reason to want to look out for  
11:12AM 16 Peter Gerace. That's why that's being offered to you.

11:12AM 17 Let's think about the testimony of M.U. She was  
11:12AM 18 Bongiovanni's fiancée back from 2005 to 2009. She was witness  
11:12AM 19 number 1 at the trial. So we're going to pull out the board  
11:12AM 20 here, that was M.U., if anybody needs to see what she looked  
11:12AM 21 like.

11:12AM 22 And M.U. came in here day 1 of testimony, and she  
11:12AM 23 told you that from 2005 to 2009, she was in a relationship  
11:12AM 24 with Joe Bongiovanni. She said that he introduced her towards  
11:12AM 25 the beginning of their relationship -- so we're all the way

1 back in '05 -- he introduced her to his good friend, Peter  
2 Gerace. She told you that -- about the things that they would  
3 do together. They went on double dates together. They went  
4 on trips to Niagara on the Lake together. They took carriage  
5 rides together, Peter Gerace and Joe Bongiovanni, all the way  
6 back in '05.

7 And M.U. also offered you some significant testimony  
8 about how Bongiovanni told her during their relationship that  
9 he felt conflicted. He felt conflicted between the guys he  
10 grew up with and his job as a DEA special agent. That  
11 conflict that Bongiovanni described to M.U., I suggest to you,  
12 that it's proof that all the way back in 2005 there was a  
13 struggle going on in Joe Bongiovanni's mind.

14 The proof, the evidence at this case, shows you that  
15 he lost that struggle, and the people of Western New York  
16 suffered because of it. Bongiovanni became corrupt. And part  
17 of his corruption involved protecting this defendant.

18 Let's stay on the relationship for a sec. It wasn't  
19 just 2005 to 2009.

20 T.O., this defendant's former fiancée --

21 If we can zoom in, Ms. Champoux, on just these four  
22 people here.

23 -- T.O. told you about a 2011 trip to Las Vegas  
24 together. And here they are, Peter and Joe Bongiovanni, on a  
25 prearranged vacation to Las Vegas together.

11:14AM 1 In 2018, 13 years after 2005 when M.U.'s talking to  
11:14AM 2 you, 2018, here they are, thick as thieves, right next to each  
11:14AM 3 other in the picture. Peter Gerace, Joe Bongiovanni, P.H., at  
11:14AM 4 the time with Peter, and Lindsay, Bongiovanni's now wife.

11:14AM 5 It's a friendship that never wavered. And if a  
11:14AM 6 picture speaks a thousand words, hopefully those pictures can  
11:14AM 7 save us some time on the summation here.

11:14AM 8 Let's go to the text messages to see how close they  
11:14AM 9 were.

11:14AM 10 Ms. Champoux, can we pull up some of the text  
11:14AM 11 messages from 310D?

11:14AM 12 These are this defendant's text messages with  
11:15AM 13 Bongiovanni.

11:15AM 14 Peter Gerace: We need to get together soon.

11:15AM 15 Bongiovanni: I know, bro. Maybe lunch soon. Miss  
11:15AM 16 you, bro. Just get better, bro. I'll pick you up in the old  
11:15AM 17 Buick and we'll hang out. That's Bongiovanni.

11:15AM 18 Peter: Love to. Thanks. Thanks for the note.

11:15AM 19 Joe: Always there for you. Love you, bro. Sorry  
11:15AM 20 I've been crazy busy. I owe you clams casino we'll get them  
11:15AM 21 soon. Bongiovanni says, hey, we've been friends for 25 years,  
11:15AM 22 all good.

11:15AM 23 And this defendant says: You mean 36 years.

11:15AM 24 Now, that's fun. We'll get there in a minute. But  
11:15AM 25 that's in 2018 at a time when Bongiovanni is now starting to

1 try to distance himself from this defendant because he  
2 realizes it's coming under scrutiny, and all of a sudden he's  
3 saying look, we've been friends for 25 years, and this  
4 defendant's like no, 36 years we've been friends. That's the  
5 relationship that existed between those two people.

6 I expect that when the judge tells you the law, so  
7 that -- that was just setting the stage for the unlawful  
8 agreement, the relationship is the background. But when the  
9 judge instructs you on the law, I expect he's going to tell  
10 you that with respect to conspiracy, actions speak louder than  
11 words, right?

12 Let's talk about the actions of both of those  
13 individuals, Joe Bongiovanni and this defendant, that prove to  
14 you that they were involved in an unlawful agreement together.

15 It starts back in 2005 with the search warrant at  
16 Craig Border's residence. And what do we know was happening  
17 in 2005? Bongiovanni's close with Peter Gerace, double dates,  
18 they're in a close friendship.

19 Craig Border, he told you he was a drug dealer, and  
20 earlier in the year in '05 he had been dating R.A., Peter  
21 Gerace's then girlfriend.

22 Craig Border told you he had some intimate photos of  
23 R.A. in a Playboy Bunny outfit in his house. He was a weed  
24 dealer. And on December 1st, 2005, the DEA shows up at his  
25 house to execute a search warrant. And you learn from

11:17AM 1 Exhibit 11A --

11:17AM 2 And we can just zoom in, Ms. Champoux, on box 9 and  
11:17AM 3 10 there? Thank you.

11:17AM 4 -- who was present for the execution of the search  
11:17AM 5 warrant at Craig Border's house? Joe Bongiovanni.

11:17AM 6 And on December 1st, 2005, when that search is  
11:17AM 7 executed, you learn that Craig Border goes back to his  
11:17AM 8 apartment, and the intimate photos of R.A. in a Playboy Bunny  
11:17AM 9 outfit are gone.

11:17AM 10 I mean, you can use your common sense. They didn't  
11:17AM 11 have evidentiary value in a marijuana-trafficking case. You  
11:17AM 12 know why they were taken. You'll -- we'll talk about that in  
11:17AM 13 a minute.

11:17AM 14 R.A. came in here, though, and she talked to you  
11:17AM 15 about this. And I submit to you that Ms. R.A. had no interest  
11:17AM 16 in helping the government at all. That was apparent from the  
11:17AM 17 way she acted on the witness stand when Mr. Tripi asked her  
11:17AM 18 questions. She wanted nothing to do with being present at  
11:17AM 19 this trial or providing testimony that could in any way  
11:18AM 20 incriminate that defendant.

11:18AM 21 She told you he's her child's father. I suggest to  
11:18AM 22 you, you can see it for what it is.

11:18AM 23 But what did she tell us? Why did we call her?

11:18AM 24 She told you that she was having an argument with the  
11:18AM 25 defendant, and he told her that his friend Joe Bongiovanni had

1 seen photos of her at Craig Border's residence. This  
2 defendant said to her, my friend Joe is a DEA agent, and he  
3 did a raid at some guy's house, and he found pictures of you.  
4 Those were her words that she described what he said to her  
5 back in 2005.

6 R.A. begrudgingly admitted that the defendant told  
7 her that Bongiovanni had even shown him the sensitive  
8 photographs that he recovered from Craig Border's apartment,  
9 things that he seized from a search warrant for no legitimate  
10 law-enforcement purpose.

11 What law enforcement officers see, what they see when  
12 they go in someone's home because a judge authorizes them to  
13 search for evidence of criminal activity, that's  
14 law-enforcement sensitive information. They don't go run  
15 around and tell their wife or their friends, hey, you're not  
16 gonna believe what I found in John Smith's house. They have  
17 an obligation, a duty, to keep that private.

18 But what did Joe Bongiovanni do? He tells his  
19 friend, Peter Gerace, hey, I saw these pictures of RuthAnn.  
20 He shows them to him.

21 And what do we know from the evidence at this case?  
22 We know that Bongiovanni knew what R.A. looked like.

23 Let's go to the two photos, or the front and back of  
24 the photo that M.U. provided us.

25 And if you can zoom in, Ms. Champoux, on this area

11:19AM 1 thank you.

11:19AM 2 2005/07/21, that's a date on the back of a printed  
11:19AM 3 photograph. July 21st, 2005. Five months approximately  
11:19AM 4 before the search at Craig Border's house, Bongiovanni is on a  
11:19AM 5 double date with Gerace and R.A. Five months earlier.

11:20AM 6 He knows what she looks like, he's in some drug  
11:20AM 7 dealer's house, he sees her pictures, these intimate photos,  
11:20AM 8 and he takes them. Corruptly. For no legitimate purpose.  
11:20AM 9 And then he shows them to his friend, Peter Gerace.

11:20AM 10 Now, chronologically, that's the first incident of  
11:20AM 11 corruption in this indictment, but it's far from the last. It  
11:20AM 12 was part of the unlawful agreement, whether spoken or  
11:20AM 13 unspoken, between Bongiovanni and Gerace, an agreement that  
11:20AM 14 Bongiovanni would use his position as a DEA special agent to  
11:20AM 15 serve Peter Gerace's interests above the interests of society.  
11:20AM 16 To betray his oath to the DEA, and to demonstrate his loyalty  
11:20AM 17 instead to this defendant. And it only gets worse from there.

11:20AM 18 As you learned during this trial, the real reason for  
11:20AM 19 that corrupt agreement between the two of them was not to help  
11:21AM 20 this defendant win an argument he was having with R.A. It was  
11:21AM 21 for Bongiovanni to use his protection, his position as a DEA  
11:21AM 22 special agent, to provide protection and to shield Peter  
11:21AM 23 Gerace from investigations, from arrests, and from criminal  
11:21AM 24 prosecution. And for years, that's exactly what he did.

11:21AM 25 We'll start now moving to 2008. The cold approach.

11:21AM 1 And this is a long time ago, so I'm going to show you Chris  
11:21AM 2 Wisniewski, Special Agent Chris Wisniewski from the DEA. He  
11:21AM 3 testified. He's the third witness at the trial. You'll have  
11:21AM 4 this in the back.

11:21AM 5 You remember -- you remember Chris from the DEA. He  
11:21AM 6 told you that he had an investigation called the Gambino  
11:21AM 7 investigation in '08, a big case involving drug dealing and  
11:21AM 8 organized crime. His target, his main target wasn't this  
11:21AM 9 defendant. He was well into his investigation, and he came  
11:21AM 10 into possession of an organizational chart --

11:22AM 11 Ms. Champoux is the best. Thank you, Karen.

11:22AM 12 -- he came into possession of an organizational  
11:22AM 13 chart. He told you TJ Webb from Homeland Security got this  
11:22AM 14 from BPD, and Peter Gerace is listed in the center towards the  
11:22AM 15 top in a significant place in that organizational chart. It  
11:22AM 16 was an evidentiary lead in the hands of a legitimate DEA  
11:22AM 17 special agent, in Chris Wisniewski. That was a case that  
11:22AM 18 Wisniewski told you Bongiovanni had nothing to do with. He  
11:22AM 19 wasn't involved in working on it, it wasn't his case.

11:22AM 20 Wisniewski and Bongiovanni were in the same group,  
11:22AM 21 and Bongiovanni came over to him. Wisniewski testified that  
11:22AM 22 Bongiovanni brought up the fact, hey, I saw Peter Gerace's  
11:22AM 23 name is on your organizational chart. I know him from the old  
11:22AM 24 neighborhood. I can do a cold approach.

11:23AM 25 Now, of course, Bongiovanni lies, because he doesn't

1 tell Chris Wisniewski in 2008, hey, look at these, we go on  
2 double dates together, we go to Niagara on the Lake, on  
3 carriage rides, he doesn't say any of that. He says oh, I  
4 know him from the neighborhood a long time ago, and he tells  
5 Chris Wisniewski I can do a cold approach.

6 And we spent a good amount of time with Special Agent  
7 Wisniewski, what is a cold approach? You're looking into an  
8 organization, and you go up to one person, you pick someone  
9 out of -- you select who you're gonna go to and you basically  
10 say, hey, we're doing this investigation, do you want to  
11 cooperate with us? Try to flip them without any charge  
12 hanging over their head. Without any prior contact, without  
13 an arrest leading up to it. You just inform them you're  
14 investigating them and see if you can get them to flip.  
15 That's what Bongiovanni suggests to Wisniewski.

16 And because Bongiovanni intentionally, on purpose,  
17 misled Wisniewski about his relationship with this defendant,  
18 Wisniewski agreed. He was offering to help. Bongiovanni  
19 offered to do a cold approach.

20 You know as you sit here now, you know what happened.  
21 Bongiovanni did whatever he did, and he came back to Chris  
22 Wisniewski. He says, hey Chris, that's a dead end, Peter  
23 Gerace, that's not going anywhere. He couldn't give us  
24 anything, he can't help us.

25 And Bongiovanni corruptly misleads and persuades

11:24AM 1 Special Agent Wisniewski to move on from the center of that  
11:24AM 2 organizational chart.

11:24AM 3 And you know once they do the cold approach, right,  
11:24AM 4 Bongiovanni's killed two birds with one stone, because he's  
11:24AM 5 gone to this defendant and he's advised him, hey, buddy, you  
11:24AM 6 came up, you're on our radar. That's corruptly protecting  
11:24AM 7 him.

11:24AM 8 And then he goes back to Wisniewski, and I submit to  
11:24AM 9 you he lies to Wisniewski and says oh, he can't help us,  
11:24AM 10 he's -- he doesn't know anything, and he directs Wisniewski  
11:24AM 11 away from him. All the while misleading him about his actual  
11:25AM 12 relationship with this defendant.

11:25AM 13 That's exactly what the corrupt agreement between  
11:25AM 14 Bongiovanni and this defendant was all about. By doing the  
11:25AM 15 fake cold approach, he moves an investigation away from Peter  
11:25AM 16 Gerace.

11:25AM 17 And Joe Bongiovanni sought to cover his tracks. You  
11:25AM 18 have Government Exhibit 30B. Let's take a look at 30B.

11:25AM 19 Ms. Champoux's got it up on the screen for us.

11:25AM 20 Bongiovanni writes what Wisniewski testified to you  
11:25AM 21 is a report filled with false information. I submit to you  
11:25AM 22 what he was doing was creating a paper trail. Wisniewski told  
11:25AM 23 you this is -- these are lies. Bongiovanni didn't go get the  
11:25AM 24 organizational chart, TJ Webb from Homeland Security did. He  
11:25AM 25 had nothing to do with it.

11:25AM 1 But he writes this report, and I submit to you what  
11:25AM 2 he's doing here is he's trying create a paper trail for why  
11:25AM 3 he's involved in this investigation at all, covering his  
11:25AM 4 tracks.

11:25AM 5 One thing we know, he didn't write anything about the  
11:25AM 6 cold approach of this defendant in the report. Nothing there.  
11:26AM 7 No details about his conversation with Peter Gerace.

11:26AM 8 What you know for sure from Special Agent  
11:26AM 9 Wisniewski's testimony is that Peter Gerace was never a source  
11:26AM 10 of information, and he was never a confidential source.  
11:26AM 11 Wisniewski told you, yeah, he -- he, Bongiovanni, came back to  
11:26AM 12 me and said, yeah, it's going nowhere.

11:26AM 13 So Gerace was not a source of information and he was  
11:26AM 14 not a confidential informant for the DEA. Didn't happen.

11:26AM 15 As you know, that lie that Peter Gerace was a  
11:26AM 16 confidential informant, that lie wouldn't come until about a  
11:26AM 17 year later when this defendant again gets himself in hot  
11:26AM 18 water, this time for violating his pro -- probation  
11:26AM 19 conditions, and he calls on his secret agent, his double  
11:26AM 20 agent, Joe Bongiovanni. And what does Bongiovanni do?  
11:26AM 21 Consistent with the corrupt agreement, he jumps in and helps  
11:26AM 22 immediately.

11:26AM 23 2009, October 31st, probation and FBI do a search  
11:27AM 24 together at Pharaoh's Gentlemen's Club. The defendant tests  
11:27AM 25 positive for cocaine, and he finds himself in hot water.

11:27AM 1 Before we go through the details of that a little  
11:27AM 2 more, I want to just kind of do an exercise to get everyone's  
11:27AM 3 mind on what was going on at Pharaoh's around Halloween of  
11:27AM 4 2009. You heard testimony, different part of the case, but  
11:27AM 5 same exact time in real life, you heard testimony from K.L.  
11:27AM 6 and G.R. and others, A.P., about the constant drug use at  
11:27AM 7 Pharaoh's. You heard testimony from G.R. and K.L. about what  
11:27AM 8 this defendant was doing upstairs at Pharaoh's, coercing them  
11:27AM 9 with drugs to have sex with himself and other people. That's  
11:27AM 10 happening in August and in the summer of 2009.

11:27AM 11 Based on the timelines provided to you by K.L. and  
11:27AM 12 G.R. and A.P., that's in the immediate lead-up to probation  
11:27AM 13 coming and -- I submit to you it should be no surprise to you  
11:28AM 14 the defendant tests positive for cocaine when probation shows  
11:28AM 15 up, based upon all the testimony you heard about him using  
11:28AM 16 cocaine constantly at the club during that timeframe.

11:28AM 17 That's the context. Providing fentanyl, providing a  
11:28AM 18 place to use fentanyl, providing Lortabs and cocaine to women  
11:28AM 19 who worked there, that's the context of what he's engaged in,  
11:28AM 20 his conduct when probation and the FBI come knocking in 2009.  
11:28AM 21 This defendant had a lot to lose. A lot to be worried about  
11:28AM 22 if there was a larger investigation into what was going on at  
11:28AM 23 Pharaoh's in 2009.

11:28AM 24 You learned from Peter Lepiane that he was contacted  
11:28AM 25 by Tom Herbst from the FBI. Peter told you that Special Agent

11:28AM 1 Herbst had information that was leading him in the direction  
11:28AM 2 of investigating the defendant. And Peter was a probation  
11:28AM 3 officer, he was responsible for supervising the defendant.

11:28AM 4 You know all the information that Herbst had, that  
11:29AM 5 was information provided by G.R. and K.L. when they got  
11:29AM 6 arrested and provided an interview to the FBI, and they talked  
11:29AM 7 about this defendant providing drugs and engaging in  
11:29AM 8 commercial sex at his location.

11:29AM 9 Ultimately, it results in a search by probation.  
11:29AM 10 They do a search at Pharaoh's, the defendant tests positive  
11:29AM 11 during a drug test, and he's in trouble, he's in hot water.  
11:29AM 12 No doubt, though, an even bigger concern for him than  
11:29AM 13 a dirty urine test from probation is the fact that the FBI is  
11:29AM 14 at the search, the FBI along with probation is at his club,  
11:29AM 15 and I submit to you in that moment, this defendant knew, got  
11:29AM 16 to call on Bongiovanni and do something about this. That's  
11:29AM 17 exactly what he does.

11:29AM 18 As a part of the corrupt agreement that Bongiovanni  
11:29AM 19 had with this defendant, he springs into action. He calls  
11:30AM 20 U.S. Probation. And what does he do? He lies.

11:30AM 21 He tells them lies. He tells probation in 2009, oh,  
11:30AM 22 yeah, Peter used to be a confidential source of information to  
11:30AM 23 me. No evidence of that at all. DEA witnesses came here and  
11:30AM 24 told you no paperwork, it doesn't exist. Because it didn't  
11:30AM 25 happen.

11:30AM 1 Chris Wisniewski told you he never gave information  
11:30AM 2 in my case in '08. But Bongiovanni, when he wants probation  
11:30AM 3 to -- to treat this defendant differently, he tells them oh,  
11:30AM 4 yeah, he used to be a source of mine. Lie.

11:30AM 5 He told probation that this defendant would be  
11:30AM 6 willing to cooperate to try to get himself out of trouble. He  
11:30AM 7 told them that this defendant would be -- would be willing to  
11:30AM 8 cooperate to get himself out of trouble. I submit to you that  
11:30AM 9 was another lie that Bongiovanni told just to try to -- to  
11:30AM 10 slow things down to back probation off. It doesn't matter  
11:31AM 11 whether it worked or not, whether probation actually changed  
11:31AM 12 how they act. Thank God probation did what they were gonna do  
11:31AM 13 anyway.

11:31AM 14 But Bongiovanni's intent, you know, when he's lying  
11:31AM 15 to them about this defendant is to try to back them off. Oh,  
11:31AM 16 leave Peter alone.

11:31AM 17 When he later needs go back and create a paper trail,  
11:31AM 18 he wrote what Wisniewski and -- and I believe Special Agent  
11:31AM 19 Casullo referred to as a fake DEA-6 report, he goes back and  
11:31AM 20 he tries to create a paper trail to cover up the lie that he  
11:31AM 21 told to U.S. Probation about this defendant previously being  
11:31AM 22 his source. That's Government Exhibit 30A.

11:31AM 23 It's a report that Bongiovanni writes to try cover up  
11:31AM 24 the corrupt agreement that he has with this defendant. Gerace  
11:31AM 25 has acted as a confidential source, and has been able to

11:31AM 1 provide information regarding individuals in this case file  
11:32AM 2 and other narcotics investigations in the past. Lie.

11:32AM 3 This case file, Chris Wisniewski told you that's his  
11:32AM 4 case file. Gerace never provided any information about that  
11:32AM 5 case. He was a dead end, remember?

11:32AM 6 But when the defendant now has reported to

11:32AM 7 U.S. Probation who worked in this courthouse that this man  
11:32AM 8 used to be his informant, all of a sudden he goes back and  
11:32AM 9 writes a report and he files it away in Chris Wisniewski's old  
11:32AM 10 case.

11:32AM 11 That's a violation of his duties as a DEA agent.

11:32AM 12 Can't lie in reports, plain and simple. And if you do it,  
11:32AM 13 because you want to cover for your buddy, doesn't matter if  
11:32AM 14 it's for a bribe, not in the elements, not part of this crime.  
11:32AM 15 If do you it because he's your friend, that's illegal.

11:32AM 16 The bigger problem facing this defendant wasn't  
11:33AM 17 probation and the dirty urine, it was the FBI. And he knew  
11:33AM 18 that, and Bongiovanni knew that, and they had a plan to deal  
11:33AM 19 with it.

11:33AM 20 Bongiovanni lives up to his part of the corrupt  
11:33AM 21 agreement. He acts in furtherance of the conspiracy. He  
11:33AM 22 kills Special Agent Herbst's investigation into this defendant  
11:33AM 23 while it's in its infancy.

11:33AM 24 And you know how they did it? It's the Bongiovanni  
11:33AM 25 trademark. It's what he would later tell Lou Selva to do, and

1 try to get Lou Selva, his drug-dealer friend, to do. He  
2 pretends Gerace is his informant to get other law enforcement  
3 to back away.

4 So Bongiovanni sets up this meeting with the FBI, and  
5 he tells his bosses one. Lie, he tells his bosses, hey, I'm  
6 going to hand Peter Gerace off to the FBI, let them use him.  
7 That's a lie. Didn't happen.

8 Special Agent Herbst told you, that didn't happen.  
9 And he tells another lie to the FBI when he meets  
10 with them, which is hey, Peter's -- he infers through his  
11 action and his words that Peter's his source, he tells Herbst,  
12 oh, I've known him a long time. Herbst, at the time they end  
13 up having this meeting with Gerace and Bongiovanni, Herbst was  
14 like a 20-plus year FBI agent. He testified to you that he  
15 knows exactly what it's like when you have a meeting and  
16 someone hands off an informant to you. He told you  
17 unequivocally. That's not what happened.

18 He told you that Bongiovanni acted -- acted in a way  
19 and said things to hold out to him that Peter Gerace was his  
20 informant.

21 And Casullo explained to you the impact that that  
22 has. He gave you some insight into the world of federal law  
23 enforcement, and Special Agent Herbst explained to you that  
24 you don't step on the toes of another federal agency if  
25 they've got someone working as an informant, it's their job to

1 deal with that person. If that person's involved in criminal  
2 activity, their job to handle it.

3 So Bongiovanni misleads and misdirects and conceals  
4 information from Special Agent Herbst, and the outcome is  
5 exactly what this defendant wanted, and it's exactly what  
6 Bongiovanni wanted.

7 It caused Herbst to move on to different things,  
8 other investigations. He leaves this defendant alone. No  
9 more looking into Pharaoh's, because he's a DEA informant.

10 Except he's not. It's a lie told by Bongiovanni as a  
11 part of a corrupt agreement, an act in furtherance of a  
12 corrupt agreement to create a two-tiered system of justice.

13 Some people get investigated by the FBI and  
14 probation, the facts lead them where they lead them, maybe  
15 they end up in this courthouse. And some people, like him,  
16 coast.

17 During the meeting, Bongiovanni tries another way to  
18 dissuade Herbst. He says, yeah, your drug case, it sounds  
19 like -- it sounds weak. I don't think anybody would prosecute  
20 that.

21 And Herbst tells you he remembers, he responded and  
22 said, I already talked to Tony Bruce at the U.S. Attorney's  
23 Office. I got a prosecutor all lined up.

24 And he described for you years later that he  
25 remembers what he called the oh, shit look on Joe

11:36AM 1 Bongiovanni's face at that moment, when Bongiovanni realized  
11:36AM 2 Herbst had gone further than he thought. This defendant was  
11:36AM 3 exposed more than he thought.

11:36AM 4 You know as you sit here today that what Bongiovanni  
11:36AM 5 did by backing Herbst off by trying to back probation off, was  
11:36AM 6 create a corrupt no-fly zone over Pharaoh's. FBI, back off.  
11:36AM 7 Corrupt no-fly zone. Which permitted this defendant to  
11:36AM 8 continue the conduct that you now know was going on in the  
11:36AM 9 summer of 2009, to continue that conduct unabated for years  
11:37AM 10 and years. To kill a law enforcement investigation, a  
11:37AM 11 legitimate law enforcement investigation, you know it's  
11:37AM 12 legitimate. You heard from K.L. and G.R. and A.P. exactly  
11:37AM 13 what was happening at that club. You know Herbst was on the  
11:37AM 14 right track, but this defendant's corrupt agreement with Joe  
11:37AM 15 Bongiovanni allowed him to continue that conduct for a decade  
11:37AM 16 after.

11:37AM 17 And after 2009's not the last time. The FBI  
11:37AM 18 investigation isn't the last time that Bongiovanni intercedes  
11:37AM 19 on this defendant's behalf. And we'll talk about why he did  
11:37AM 20 it in a little bit. But let's move on to 2016.

11:37AM 21 Things start to heat up again in 2016 with Special  
11:37AM 22 Agent Anthony Casullo, Tony Casullo, and you heard him  
11:37AM 23 testify. Special Agent Casullo initiates an investigation  
11:37AM 24 into this defendant in 2016, and he tells you he's concerned,  
11:38AM 25 he reports to his boss -- because he knows Bongiovanni is

1 somewhat friends with Gerace -- he reports to his boss, hey,  
2 Joe Bongiovanni's phone might be in Gerace's phone records  
3 when I order them. And Casullo told you his boss said okay,  
4 go ahead, order the phone records and we'll deal with it when  
5 it happens, if it happens.

6 So Casullo orders the phone records in 2016, this  
7 defendant's phone records, and he sees Bongiovanni's number  
8 716-818-0966. He sees the phone number in the phone records,  
9 goes to his boss and says, hey, Joe's number's in here what do  
10 you want me to do? The boss says, I'll handle it.

11 So Tony Casullo goes on about, you know, continuing  
12 to start an investigation into this defendant. And he  
13 described to you how after that happened, after he told his  
14 boss that Bongiovanni's phone number was in Peter Gerace's  
15 phone records, his boss became noticeably hostile to him at  
16 work -- Bongiovanni, I'm sorry, became noticeably hostile at  
17 him at work. He's pissed off. Casullo told you he testified  
18 that he didn't really understand why at the time. But, yeah,  
19 we're sitting here knowing everything you know, you know why  
20 he was pissed.

21 The alarm bells were going on for Bongiovanni again.  
22 As we discussed twice already, in '08 and '09, Bongiovanni's  
23 going to have to jump in and back people off of Peter Gerace.  
24 Prevent them not only from investigating and arresting this  
25 defendant, but prevent them from discovering that Bongiovanni

11:39AM 1 himself is involved in protecting him.

11:39AM 2 And this time, it's going to be even harder for  
11:39AM 3 Bongiovanni, because it's his own agency that's investigating  
11:39AM 4 Peter Gerace.

11:39AM 5 The things he's done in the past to back off the FBI,  
11:39AM 6 that's not gonna work.

11:39AM 7 The cold approach that he did with Wisniewski's  
11:39AM 8 investigation, that's not gonna work. The cold approach, this  
11:39AM 9 defendant's name had come up in the context of a much larger  
11:39AM 10 case. Casullo was investigating this defendant and Pharaoh's  
11:39AM 11 specifically. It's common sense you don't do a cold approach  
11:40AM 12 of your main target. So that wasn't an option.

11:40AM 13 So what does Bongiovanni do? Well, when Special  
11:40AM 14 Agent Casullo testified to you he's trying to clear the air,  
11:40AM 15 and he invites Bongiovanni into a conference room to have a  
11:40AM 16 private discussion.

11:40AM 17 I submit to you at that moment, Bongiovanni seizes on  
11:40AM 18 the opportunity to press the nuclear button. He used his  
11:40AM 19 bluster and his words to blow up Casullo's investigation into  
11:40AM 20 Gerace. And Casullo described that conversation to you that  
11:40AM 21 happened eight years ago in minute detail. He remembers who  
11:40AM 22 spoke first, who spoke second, what words they said. And I  
11:40AM 23 submit to you the reason why Tony Casullo remembers that  
11:40AM 24 conversation almost verbatim is because it shocked him to his  
11:40AM 25 core. And that's exactly what Bongiovanni was designing in

11:40AM 1 that moment.

11:40AM 2 I submit to you that conversation has haunted Tony  
11:41AM 3 Casullo for the rest of his career, and I think you saw that  
11:41AM 4 from him when he testified on the witness stand.

11:41AM 5 So they walk into that conference room, and Casullo  
11:41AM 6 says he speaks first, and he's apologetic. He says, hey, Joe,  
11:41AM 7 I wasn't trying to jam you up. I'm not trying to get you in  
11:41AM 8 trouble, just running Peter's phone records. That's all.

11:41AM 9 And he tells you that Bongiovanni immediately is  
11:41AM 10 elevated. He's angry. Special Agent Casullo testified to you  
11:41AM 11 that Bongiovanni's first words to him were, this is bullshit.

11:41AM 12 What's bullshit? Investigating this defendant?

11:41AM 13 But Bongiovanni's angry about it, and he doesn't stop  
11:41AM 14 there. His anger and his bluster, he's elevated and rambling,  
11:41AM 15 and he says, this is bullshit. And he follows that up by  
11:41AM 16 saying, that kid called me, that kid called me when a stripper  
11:41AM 17 overdosed in his club, and I told him to get her out of there.

11:41AM 18 A shocking admission. Shocking when he said it to  
11:42AM 19 Tony Casullo in 2016. I submit it was probably shocking to  
11:42AM 20 you when you heard it in 2024.

11:42AM 21 A DEA special agent saying a person that he knew was  
11:42AM 22 being investigated by his own agency had called him when a  
11:42AM 23 dancer overdosed. They're supposed to investigate drug  
11:42AM 24 overdoses. And Bongiovanni says, he called me when a stripper  
11:42AM 25 overdosed, and I told him get her out of there.

11:42AM 1 In a moment of anger, he makes that shocking  
11:42AM 2 admission. Get her out of there like she's trash.

11:42AM 3 That's the corrupt agreement. That's the criminal  
11:42AM 4 conspiracy in action. Don't investigate the dancer, the  
11:42AM 5 stripper that's overdosing. Get her out. Cover it up.  
11:42AM 6 Conceal the crimes that are happening.

11:42AM 7 And who benefited from that? Who benefitted from the  
11:43AM 8 corrupt advice, and the coverups, and the concealments? He  
11:43AM 9 did. Over and over again for years. From 2008, to 2009, to  
11:43AM 10 2016, all the way up until his indictment in this case, he  
11:43AM 11 benefited from the corrupt agreement with Bongiovanni, his  
11:43AM 12 agent on retainer.

11:43AM 13 And you know for a fact that that conversation that  
11:43AM 14 Casullo described for you, you know for a fact that it  
11:43AM 15 happened. And here's why.

11:43AM 16 You heard testimony from Doug Augustyniak, no friend  
11:43AM 17 to the government. Doug and Tony have no -- they're not  
11:43AM 18 related to each other at all. Doug's a VIP attendant at  
11:43AM 19 Pharaoh's, Tony Casullo is a DEA agent, I submit to you not a  
11:43AM 20 corrupt one. And Doug Augustyniak describes to you a dancer  
11:43AM 21 overdosing, calling this defendant, and receiving the advice  
11:43AM 22 from this defendant, get her out of there. Drop her off at a  
11:43AM 23 hotel lobby or something.

11:44AM 24 He was employing -- this defendant, Peter Gerace, was  
11:44AM 25 employing the corrupt advice he was getting from his DEA agent

11:44AM 1 on retainer.

11:44AM 2 So let's go back. That's -- that's corroboration.

11:44AM 3 It's why you know you can believe what Tony Casullo tells you,  
11:44AM 4 based on the evidence and the testimony of other witnesses.

11:44AM 5 Let's go back to the conversation. Casullo tells you  
11:44AM 6 that he was shocked, he's trying to process what Bongiovanni  
11:44AM 7 just said. Bongiovanni pressed forward, I submit to you,  
11:44AM 8 because he's intent on backing Casullo down.

11:44AM 9 And he asks Casullo in an accusatory tone of voice,  
11:44AM 10 he says, isn't he friends with your brother-in-law?

11:44AM 11 And I submit to you, you saw from Tony Casullo, he  
11:44AM 12 doesn't care. His brother-in-law is not him, it's not his  
11:44AM 13 friend, he doesn't care. And he tells Bongiovanni that. He  
11:44AM 14 says, yeah, and my brother-in-law caused a lot of problems.

11:45AM 15 Casullo is not going to back off of an investigation  
11:45AM 16 because of who his wife's brother is. I submit to you his  
11:45AM 17 demeanor and his testimony established that for you.

11:45AM 18 So Bongiovanni has to try a new avenue of attack. So  
11:45AM 19 he asks Casullo, Casullo, in an accusatory tone, what, do you  
11:45AM 20 hate Italians?

11:45AM 21 And Tony Casullo's, like, no, I'm Italian. What are  
11:45AM 22 you talking about?

11:45AM 23 And Bongiovanni, in a disgusting display of  
11:45AM 24 corruption and bigotry, vomited out the words, we should be  
11:45AM 25 investigating N-words and S-words, disgusting racial comments

1 uttered for one purpose: To back Tony Casullo down, stop his  
2 investigation in its tracks.

3 When he did that, when he said those disgusting  
4 racial remarks to Tony Casullo about who the DEA should be  
5 investigating, what he did was put Tony Casullo in a dilemma.  
6 I submit to you it should have been an easy choice for Tony  
7 Casullo, but it wasn't.

8 He gave him two choices. You go and report this  
9 conversation and violate the blue wall of silence and make  
10 yourself a pariah in the office, or you back down and shut up.  
11 Leave it alone.

12 And for years, to Tony Casullo's shame, that's what  
13 he did. For about two years he didn't report it to his  
14 management.

15 That conversation, after Bongiovanni sees Casullo  
16 start to calm down, I submit to you, he moves on and he says  
17 hey, listen, I'm going to the guy's parents' 50th anniversary.  
18 That's what he tells Casullo basically on the way out the  
19 door. I'm going to his parents' 50th wedding anniversary.

20 And Casullo, who had no clue about Government Exhibit  
21 310D at that time in 2016, he's corroborated by their text  
22 messages where you see Bongiovanni and Gerace texting about  
23 it.

24 Casullo, who was new to the Buffalo office and who  
25 was worried about being a pariah for accusing another agent of

1 racism and misconduct and corruption, he made the wrong  
2 choice, he stayed quiet. For a little while he kept his mouth  
3 shut.

4 But you know that Casullo ultimately did come forward  
5 with what you know was the truth, and two years later he  
6 reports what Bongiovanni said to him. And when he did report  
7 it, he told you, he faced all of the backlash that he was  
8 worried about, which is shameful.

9 Once again, at least temporarily, in 2016,  
10 Bongiovanni steps in, and he squashes an investigation into  
11 this defendant. Another example of the conspiracy and the  
12 corrupt agreement at work.

13 And the defendant didn't only rely on Bongiovanni to  
14 squash investigations into himself. You heard testimony from  
15 Lou Selva that Bongiovanni told Lou Selva, yeah, Peter called  
16 me one time to jump in on Anthony's behalf when Anthony got in  
17 trouble -- Anthony Gerace got in trouble with drugs in  
18 Amherst, and I did.

19 He also used him, in addition to providing protection  
20 to himself and his brother and other drug dealers, Gerace used  
21 Bongiovanni to get realtime criminal advice. Let's talk about  
22 that.

23 May 4th, 2017. So we're just about a year after  
24 Bongiovanni bullies Casullo away from Gerace, just about a  
25 year after that, when Bongiovanni's obviously aware that the

11:48AM 1 DEA has an interest in investigating Peter Gerace for drug  
11:48AM 2 dealing. May 4th, 2017, this defendant, Peter Gerace, leaves  
11:48AM 3 this voicemail on the DEA work cell phone of Joe Bongiovanni.

11:48AM 4 And I want to play 311, please, Ms. Champoux.

11:49AM 5 (Audio was played.)

11:49AM 6 **MR. COOPER:** Hey, Joe, it's Peter. Listen, I want to  
11:49AM 7 know, if a guy's dealing drugs, and he's got a regular phone  
11:49AM 8 or if it's a phone that -- one of those TracFones, is there a  
11:49AM 9 way you could ping it like the police do to see where you're  
11:49AM 10 at? Where they can tell where you're at? I just want to know  
11:49AM 11 if you could do that or not. Give me a call back, 725-1931.

11:49AM 12 His words. A voicemail he left in May of 2017 on a  
11:49AM 13 DEA special agent's cell phone. It's crystal clear documented  
11:49AM 14 example of this defendant asking Bongiovanni for  
11:50AM 15 law-enforcement sensitive information.

11:50AM 16 The reason it's law-enforcement sensitive  
11:50AM 17 information, I submit to you, is because he's asking about the  
11:50AM 18 capability to geolocate a specific type of phone. Whether the  
11:50AM 19 DEA or the FBI is able to do that or not is not something that  
11:50AM 20 the DEA and the FBI want drug dealers to know about.

11:50AM 21 It's common sense, right? You don't want that  
11:50AM 22 information out in the public domain. It frustrates the  
11:50AM 23 United States and law enforcement's ability to investigate  
11:50AM 24 drug-trafficking crimes if drug dealers know the exact tools  
11:50AM 25 you have to investigate. So it's law-enforcement sensitive

11:50AM 1 information.

11:50AM 2 And this defendant brazenly, without a care in the  
11:50AM 3 world, calls Bongiovanni, says hey, if a guy's selling drugs  
11:50AM 4 can you ping his TracFone?

11:50AM 5 This defendant wasn't writing a college paper. I  
11:50AM 6 submit to you that he wasn't curious about something that he  
11:50AM 7 saw on TV. In the context of all the evidence and testimony  
11:50AM 8 that you've heard in this case, you know the defendant was  
11:51AM 9 involved in distributing drugs. You know about his brother's  
11:51AM 10 involvement in distributing drugs. And here he is in a  
11:51AM 11 recorded voicemail asking for advice about getting away with  
11:51AM 12 selling drugs from a sworn DEA agent.

11:51AM 13 I submit to you the only reason that this defendant  
11:51AM 14 felt comfortable doing that is because he's got that agent in  
11:51AM 15 his pocket. He wasn't worried about it. He left it in a  
11:51AM 16 recorded voicemail.

11:51AM 17 And of course he was right, he did have Bongiovanni  
11:51AM 18 in his pocket, because Bongiovanni answers him.

11:51AM 19 We're at 310D, page 42. Ms. Champoux, can you zoom  
11:51AM 20 in on the gray box?

11:51AM 21 Bongiovanni gets right back to him. Yes, but you  
11:51AM 22 would need a warrant in order to get a ping order.

11:51AM 23 Retainer. Bongiovanni was on retainer for this drug  
11:51AM 24 dealing, sex-trafficking defendant, helping him stay out of  
11:51AM 25 trouble.

11:51AM 1 Just how corrupt was their relationship? They were  
11:52AM 2 doing cocaine together. They blew cocaine together, think  
11:52AM 3 about that. This defendant felt comfortable enough in the  
11:52AM 4 presence of this sworn DEA agent to rip lines of coke with him  
11:52AM 5 at Sunset Bay at Tom Doctor's cottage. P.H., she was there.

11:52AM 6 Let's zoom in on just the right portion of this  
11:52AM 7 please, Ms. Champoux. This is Government Exhibit 127.

11:52AM 8 Here's P.H. on the left. Next to her in the red  
11:52AM 9 shirt is this defendant, and then to the right is Bongiovanni  
11:52AM 10 and his wife. They're at Tom Doctor's little party cottage on  
11:52AM 11 Sunset Bay. And P.H., who at the time didn't know Joe  
11:52AM 12 Bongiovanni from a hole in the wall, she goes upstairs with  
11:52AM 13 Peter, she says oh, it's -- it's Peter's friend, we go  
11:52AM 14 upstairs, and this guy breaks out cocaine and we all used it.

11:52AM 15 At the time she circled his face, she didn't know he  
11:52AM 16 was a DEA special agent. She knew nothing about the  
11:52AM 17 significance of it. But you heard her testify this guy and  
11:53AM 18 this guy were using cocaine together at the cottage.

11:53AM 19 And if we can zoom out, Ms. Champoux.

11:53AM 20 The other person that she circled that she also said  
11:53AM 21 used cocaine with Bongiovanni and Gerace, is this guy on the  
11:53AM 22 left here in the sunglasses, who you've learned is Tom Doctor.  
11:53AM 23 She had no clue at the time she circled that person on the  
11:53AM 24 left that he was formerly Bongiovanni's task force officer  
11:53AM 25 partner, another law enforcement officer.

11:53AM 1 She picks those two people because those are the two  
11:53AM 2 people she saw using cocaine. And how do you know you can  
11:53AM 3 believe P.H. when she tells you that? Other than the fact  
11:53AM 4 that, I submit to you, her testimony on its own should be  
11:53AM 5 found credible by you, think about the fact that she's  
11:53AM 6 corroborated by Lou Selva who she doesn't even know.

11:53AM 7 Lou Selva also told you he's been to Tom Doctor's  
11:53AM 8 cottage with Joe Bongiovanni, and they've blown cocaine there.  
11:53AM 9 Two totally separate people, two totally separate walks of  
11:54AM 10 life, describing the exact same conduct. So you know P.H. is  
11:54AM 11 telling you the truth based on the other evidence in the case.

11:54AM 12 The final acts of coverup and corruption occur when  
11:54AM 13 Bongiovanni finds out that Casullo has reported his comments  
11:54AM 14 and his relationship with Gerace in the context of his  
11:54AM 15 relationship with this defendant.

11:54AM 16 Bongiovanni knows that his relationship with this  
11:54AM 17 defendant is under scrutiny, he's racing to retire, spurred on  
11:54AM 18 by the spotlight that's been placed on him and this defendant  
11:54AM 19 when Casullo finally does come forward. And Bongiovanni, on  
11:54AM 20 his way out the door, tries to create another false,  
11:54AM 21 misleading, corrupt, concealing, coverup report or memorandum.  
11:54AM 22 He writes three, a series of three memorandums on his way out  
11:55AM 23 the door to try to create some paper trial of his relationship  
11:55AM 24 with Peter Gerace, and it's nonsense.

11:55AM 25 He generates these memorandums to draw attention away

11:55AM 1 from himself and his corrupt agreement with this defendant.

11:55AM 2 Let's take a quick look at those memos, because they  
11:55AM 3 speak to Bongiovanni's consciousness of guilt, the fact that  
11:55AM 4 he's lying shows you that he knew what he was doing was wrong.

11:55AM 5 Government Exhibit 97. This is the first one, the  
11:55AM 6 first memo from November 1st, 2018. We're going zoom in on  
11:55AM 7 the top paragraph.

11:55AM 8 It was brought to my attention that Peter Gerace had  
11:55AM 9 become a target of a federal investigation. Based upon  
11:55AM 10 intelligence I have received, I have attempted to terminate  
11:55AM 11 all contact with Gerace.

11:55AM 12 Hold on. Bongiovanni, in 2018, is saying oh, I just  
11:55AM 13 became aware that Gerace is a target of investigation. You  
11:55AM 14 know that all the way back in 2008 and '9 Bongiovanni knew  
11:56AM 15 Gerace was a target of federal investigation. So that's a  
11:56AM 16 lie. And you know it's BS that he's trying to terminate all  
11:56AM 17 contact with him in 2018.

11:56AM 18 You can zoom out of that, Ms. Champoux.

11:56AM 19 Okay. The next part of that paragraph, it talks  
11:56AM 20 about, oh, it should be known any contact I've had with this  
11:56AM 21 defendant Peter Gerace in the past was minimal in-person  
11:56AM 22 contact, and primarily consisted of random telephonic  
11:56AM 23 communication based upon the fact that we were childhood  
11:56AM 24 friends. Yeah, okay.

11:56AM 25 Let's go to Government Exhibit 127, 426-1, 490A.

11:56AM 1 Minimal in-person contact, you know, like vacations  
11:56AM 2 to Las Vegas, and carriage rides in Niagara on the Lake, and  
11:56AM 3 blowing cocaine together at Sunset Bay.

11:56AM 4 But Bongiovanni left those details out because he was  
11:56AM 5 lying. Random telephonic communication. You remember the  
11:56AM 6 British accent FBI data analyst, Gregory Machin? Machin blew  
11:57AM 7 a hole through that random telephonic communication. Take a  
11:57AM 8 look at their phone contacts if you need that.

11:57AM 9 Bongiovanni didn't just forget to mention that Gerace  
11:57AM 10 was leaving him voicemails asking for tips on getting away  
11:57AM 11 with drug dealing, he was doing it on purpose. It was  
11:57AM 12 corruption, it was a coverup.

11:57AM 13 Let's go to Government Exhibit 98.

11:57AM 14 The second corrupt, concealing memo designed to hide  
11:57AM 15 this conspiracy. We're gonna look at the bottom of page 1.

11:57AM 16 Thank you, Ms. Champoux.

11:57AM 17 So this is a memo from December 10, 2018. This is my  
11:57AM 18 favorite. This is Bongiovanni attempting to accurately  
11:57AM 19 recount a conversation he had on the phone with Peter Gerace.  
11:57AM 20 He's claiming this is a conversation they had in real life.

11:57AM 21 Gerace stated that the person believes internal  
11:57AM 22 affairs is watching me because Gerace and I have been friends  
11:57AM 23 since we were kids, and now he owns Pharaoh's Gentlemen's  
11:57AM 24 Club.

11:57AM 25 I responded that yes, we have been friends for years,

11:58AM 1 but I never come into your club. And Gerace said he agrees.

11:58AM 2 Anyone believe that conversation happened that way?

11:58AM 3 You know it didn't.

11:58AM 4 Let's go to Government Exhibit 310D at page 10.

11:58AM 5 July 13th, 2015. Here's Bongiovanni saying to

11:58AM 6 Gerace, leaving my office now. Gerace says okay, employee

11:58AM 7 entrance on Aero.

11:58AM 8 Hmmm, where's there an employee entrance on Aero

11:58AM 9 Drive? What did we learn during the course of this trial?

11:58AM 10 There might be more than one business on Aero Drive that has

11:58AM 11 an employee entrance. Who knows, right?

11:58AM 12 Let's move on to page 54, see if we can find an

11:58AM 13 answer.

11:58AM 14 Bongiovanni texting on April 1, 2018, I'll come see

11:58AM 15 you at Pharaoh's.

11:58AM 16 The evidence shows that Bongiovanni was lying,

11:58AM 17 obviously. And it's not just the text messages. K.L. saw

11:59AM 18 Bongiovanni at Pharaoh's. Katrina Nigro saw Bongiovanni at

11:59AM 19 Pharaoh's. A.P. saw him at Pharaoh's, met him there, and then

11:59AM 20 got his business card. Keep in mind, she was a drug dealer.

11:59AM 21 You can take that down.

11:59AM 22 These memos are a load of nonsense. The only reason

11:59AM 23 they're important is because they show Bongiovanni's

11:59AM 24 consciousness of guilt. They're an act, an overt act designed

11:59AM 25 to coverup and conceal the conspiracy that existed with this

11:59AM 1 defendant. He's lying about their relationship.

11:59AM 2 Exhibit 99, the last memo, and we're -- we're getting  
11:59AM 3 through here. Let's look at -- this is the last memo, and  
11:59AM 4 it's designed essentially to dirty up Tony Casullo on his way  
11:59AM 5 out the door.

11:59AM 6 Just days before he retires, Bongiovanni writes a  
11:59AM 7 fairy tale about how he saw Tony Casullo drinking privately  
11:59AM 8 with this defendant in 2015 at -- at a restaurant, at Tappo, I  
12:00PM 9 think it says, and then later at, let's see, thank you, Big  
12:00PM 10 Ditch Brewery and later at Tappo.

12:00PM 11 First of all, if Casullo and Gerace were alone at the  
12:00PM 12 Big Ditch Brewery, alone, then what was Bongiovanni doing  
12:00PM 13 there? Was he out on surveillance watching what his best  
12:00PM 14 friend was doing?

12:00PM 15 Casullo told you what really happened. He was at his  
12:00PM 16 high school reunion in 2015, and Peter Gerace, this defendant,  
12:00PM 17 was essentially pestering him, hey, come on, let's go across  
12:00PM 18 the street, there's another DEA agent over there, let's go see  
12:00PM 19 him. Bongiovanni, he's with my brother Anthony.

12:00PM 20 And Casullo told you under oath subject to  
12:00PM 21 cross-examination, not in a nonsense memo, in real life, he  
12:00PM 22 came in here and told you, eventually I relented and I walked  
12:00PM 23 across the street, and I saw Joe Bongiovanni hanging out with  
12:00PM 24 Anthony Gerace, this defendant's brother, and a few other  
12:01PM 25 people.

12:01PM 1 So why did Bongiovanni write this memo? Well I  
12:01PM 2 submit to you on his way out the door, he knows Casullo's  
12:01PM 3 reporting about his inappropriate relationship with Gerace,  
12:01PM 4 about the comments that he made, and he knows Casullo saw him  
12:01PM 5 alone with Anthony Gerace and a group of other people at a  
12:01PM 6 bar. So he basically flips himself into, you know, puts Tony  
12:01PM 7 Casullo in his position and says, I saw Tony. And he tries to  
12:01PM 8 create this he-said/he-said situation.

12:01PM 9 But you know, using your good judgement and your  
12:01PM 10 common sense, that Tony Casullo was -- testified consistent  
12:01PM 11 with all the other proof in this case. That it was  
12:01PM 12 Bongiovanni hanging out with Anthony Gerace, not him.

12:01PM 13 Casullo isn't alone in saying that Bongiovanni hung  
12:01PM 14 out with Anthony Gerace. Kevin Myszka. Kevin Myszka, over  
12:01PM 15 here on the right, he told you he went to Toronto, Canada with  
12:01PM 16 Joe Bongiovanni and a group of other people, it was like a  
12:02PM 17 cocaine-fueled weekend in Canada. And who was there? Joe  
12:02PM 18 Bongiovanni and Anthony Gerace. That's how you know you can  
12:02PM 19 trust Special Agent Casullo's testimony.

12:02PM 20 Each of those memos are overt acts in furtherance of  
12:02PM 21 the conspiracy. They're lies designed to cover up the  
12:02PM 22 criminal agreement.

12:02PM 23 I expect that the judge is going to instruct you when  
12:02PM 24 people are in a conspiracy together, they're legally  
12:02PM 25 responsible for each other's actions that are in furtherance

12:02PM 1 of the conspiracy.

12:02PM 2 These lies that Bongiovanni told designed to cover up  
12:02PM 3 and mislead are attributable to this defendant. I submit to  
12:02PM 4 you that makes sense, because members of a conspiracy are like  
12:02PM 5 members of a team. They're working towards the same goal.

12:02PM 6 So think about. I have an analogy, and it's a Bills  
12:02PM 7 analogy. Shocker.

12:02PM 8 Dion Dawkins and Josh Allen, they play for the same  
12:02PM 9 team, right? If Dion Dawkins jumps early and there's a false  
12:02PM 10 start penalty, he's not the only one who's moving back five  
12:02PM 11 yards. The whole team gets penalized, because they're working  
12:02PM 12 towards the same goal. They're members of a team.

12:02PM 13 Conspiracy is the same thing.

12:03PM 14 I submit to you all of Bongiovanni's actions  
12:03PM 15 corruptly covering up, protecting, shielding this defendant,  
12:03PM 16 are legally attributable to this defendant. Listen carefully  
12:03PM 17 when the judge instructs you on the law in that regard.

12:03PM 18 Bongiovanni gives interviews later, and we're going  
12:03PM 19 to move through this quick, we're running out of time.

12:03PM 20 Bongiovanni gives interviews later with HSI, and with the  
12:03PM 21 Department of Justice OIG, and he lies more. And he lies in  
12:03PM 22 both of these interviews, says he never witnessed Peter Gerace  
12:03PM 23 use narcotics. Lie.

12:03PM 24 Denied that the defendant ever called him while a  
12:03PM 25 staff member was overdosing at Pharaoh's. Lie.

12:03PM 1 Denied ever initiating contact with Peter Gerace.

12:03PM 2 Lie.

12:03PM 3 And then in June, he gives an interview at his house  
12:03PM 4 during a search warrant, and he says:

12:03PM 5 He does not have a close relationship with the  
12:03PM 6 defendant; you know that's not true.

12:03PM 7 Claimed he hasn't spoken with this defendant in over  
12:03PM 8 a year; demonstrably false.

12:03PM 9 Denied ever attending a party with the defendant's  
12:03PM 10 brother Anthony; you know that's not true, you heard from  
12:03PM 11 Kevin Myszka.

12:03PM 12 Claimed that this defendant had once tried cooperate  
12:04PM 13 with the DEA and that he recused himself; not true. That's  
12:04PM 14 designed to cover up and protect what happened.

12:04PM 15 And claimed that the Sunset Bay cottage had been --  
12:04PM 16 Sunset Bay cottage party had been years earlier; and that was  
12:04PM 17 also a lie. You see the picture and the text messages. It's  
12:04PM 18 in the defendant's text messages with Bongiovanni. That  
12:04PM 19 happened months earlier, not years earlier.

12:04PM 20 So the first element of Count 1, that two or more  
12:04PM 21 people entered an unlawful agreement. Check.

12:04PM 22 The judge will tell you actions speak louder than  
12:04PM 23 words, and you don't lose your common sense when you walk  
12:04PM 24 through the door. You look at the entire sphere of what  
12:04PM 25 happened over the course of 11 years from '05, more than that,

12:04PM 1 '05 to '19, someone else do the math, a long time.

12:04PM 2 You look at everything that happened, you put all of  
12:04PM 3 that together, and I submit to you there is no other  
12:04PM 4 reasonable explanation than that these two people were working  
12:04PM 5 together, they're in a corrupt agreement to have Bongiovanni  
12:05PM 6 defraud the United States by violating his oath and duties, by  
12:05PM 7 being loyal to this defendant.

12:05PM 8 The second element is that the defendant willfully,  
12:05PM 9 knowingly, voluntarily became a part of that conspiracy, and  
12:05PM 10 you know that he did.

12:05PM 11 This defendant is the one who called Bongiovanni in  
12:05PM 12 '09 and told him, hey, probation and the FBI showed up.  
12:05PM 13 That's an act that shows you he knows he's going to be  
12:05PM 14 protected from Bongiovanni. This defendant is the one who  
12:05PM 15 called Bongiovanni to get him to step in and protect Anthony  
12:05PM 16 Gerace, another way you know the defendant voluntarily engaged  
12:05PM 17 in this criminal partnership. The defendant is the one who  
12:05PM 18 left a voicemail on Bongiovanni's phone asking for criminal  
12:05PM 19 advice. The defendant is the one who called Bongiovanni when  
12:05PM 20 a dancer was overdosing for criminal advice. How do I get out  
12:05PM 21 of this? What should I do?

12:05PM 22 The defendant knew full well that he was in a corrupt  
12:05PM 23 agreement with Joseph Bongiovanni to be shielded from law  
12:05PM 24 enforcement investigation.

12:05PM 25 This defendant provided envelopes of cash to

12:06PM 1 Bongiovanni on multiple occasions, more evidence that he was  
12:06PM 2 knowingly and willfully a member of a conspiracy, a corrupt  
12:06PM 3 agreement.

12:06PM 4 Third element, that an overt act was committed by  
12:06PM 5 either a coconspirator. There's 20 overt acts in the  
12:06PM 6 indictment, I don't have time to read them all to you now, but  
12:06PM 7 most the things that we just discussed explaining why you know  
12:06PM 8 the conspiracy existed are listed as overt acts.

12:06PM 9 2009, interceding with probation and the FBI, those  
12:06PM 10 are overt acts.

12:06PM 11 The defendant leaving a voicemail for Bongiovanni  
12:06PM 12 asking about the TracFone -- pinging TracFones, that's an  
12:06PM 13 overt act listed in the indictment, and you only need to find  
12:06PM 14 one overt act, there's 20 of them. You need to find one  
12:06PM 15 beyond a reasonable doubt to satisfy that element. I suggest  
12:06PM 16 to you that when you read through all 20 in -- in  
12:06PM 17 chronological order, I suggest to you every single one of them  
12:06PM 18 has been proven at this trial beyond a reasonable doubt, but  
12:07PM 19 the judge will tell you, you only need to find one.

12:07PM 20 Those -- those memos, designed to cover up and  
12:07PM 21 conceal, all of them are overt acts.

12:07PM 22 The fourth element that you have to find is that the  
12:07PM 23 overt act that was committed was committed to further the  
12:07PM 24 purpose of the conspiracy, and that's a -- a dunker. The  
12:07PM 25 overt act is committed to further the objectives of the

12:07PM 1 criminal partnership.

12:07PM 2 The criminal partnership here is to protect this  
12:07PM 3 defendant. And so all the things that Bongiovanni was doing  
12:07PM 4 were designed to protect him. It's obvious. When Gerace  
12:07PM 5 calls this defendant and asks for -- when Gerace calls  
12:07PM 6 Bongiovanni and asked for a law-enforcement sensitive  
12:07PM 7 information, that's to further the objective of the  
12:07PM 8 conspiracy. You'll see the objectives laid out in the  
12:07PM 9 indictment: To obtain law-enforcement sensitive information  
12:07PM 10 from Bongiovanni, that's an objective of the conspiracy.

12:07PM 11 So the fourth element is met.

12:07PM 12 And that's it. That's all there is to  
12:07PM 13 Count Number 1, conspiracy to defraud the United States.

12:08PM 14 Notice that there isn't an element in there about it  
12:08PM 15 being an exchange for money. That's not required. We're  
12:08PM 16 gonna get there in a second when we talk about Count 2, but  
12:08PM 17 for Count 1, it doesn't matter, and I want you to keep that in  
12:08PM 18 mind.

12:08PM 19 It's good evidence to consider the fact that this  
12:08PM 20 defendant was paying envelopes of cash to Bongiovanni shows  
12:08PM 21 you that he knows they're in a corrupt agreement together, but  
12:08PM 22 it's not required.

12:08PM 23 Find the defendant guilty of Count 1 because his  
12:08PM 24 choices and his conduct make him guilty of Count 1.

12:08PM 25 We're going to move on to Count 2 now.

12:08PM 1               Public corruption. Same category, bribing, paying a  
12:08PM 2 bribe to a public official. One of the elements that you're  
12:08PM 3 going to have to find is that the defendant offered, promised,  
12:08PM 4 or gave something of value to Joseph Bongiovanni. We'll talk  
12:08PM 5 about it in a minute. Those are the envelopes of cash.

12:08PM 6               Second, that Bongiovanni was then a public official  
12:08PM 7 by virtue of being a special agent of the DEA, proven beyond a  
12:08PM 8 reasonable doubt, Bongiovanni was a special agent at the DEA.

12:09PM 9               Third, that the defendant did so with the corrupt  
12:09PM 10 intent to influence an official act or to induce that official  
12:09PM 11 to perform an act or omit to perform an act.

12:09PM 12               There's two things that are important about this  
12:09PM 13 bribery count that I want to focus on, two things that I'd  
12:09PM 14 like to focus on with you. One of them is called mixed  
12:09PM 15 motive. I think the judge is going to instruct you about  
12:09PM 16 mixed motive, and he's going to tell you if a payment is made  
12:09PM 17 for a multitude of reasons, for a birthday present and also as  
12:09PM 18 a part of a scheme to continue having a special agent on  
12:09PM 19 retainer, that's fine, people rarely act for one purpose  
12:09PM 20 alone. So if a person has a mixed motive when they provide a  
12:09PM 21 financial benefit, that's still sufficient as long as part of  
12:09PM 22 that motive was motivated by corrupt intent. So keep that in  
12:09PM 23 mind.

12:09PM 24               The other thing I want to discuss is called stream of  
12:09PM 25 benefits. I expect the judge is going to discuss stream of

12:09PM 1 benefits with you. And when he talks about that, I think  
12:09PM 2 you'll learn that we don't have to prove in Count 2 that any  
12:10PM 3 specific payment of money was tied directly to any specific  
12:10PM 4 act or omission by Bongiovanni.

12:10PM 5 So, a stream of benefits, essentially, it's  
12:10PM 6 sufficient in the eyes of the law for us to prove to you  
12:10PM 7 beyond a reasonable doubt that the bribe or bribes were paid  
12:10PM 8 in order for this defendant to keep Joe Bongiovanni on  
12:10PM 9 retainer. This defendant had Bongiovanni ready on an  
12:10PM 10 as-needed basis. When something comes up, jump in and protect  
12:10PM 11 me. When I have questions, answer them. And there's a stream  
12:10PM 12 of benefits over the course of time in relation to that  
12:10PM 13 conduct. And I submit to you that's exactly what happened  
12:10PM 14 here.

12:10PM 15 Based on all the corrupt things that we just talked  
12:10PM 16 about that Bongiovanni did, you know that Bongiovanni as a DEA  
12:10PM 17 special agent used his role and his job to protect this  
12:10PM 18 defendant from investigation. Testimony and evidence proves  
12:10PM 19 that.

12:10PM 20 The whole purpose of cash bribes, though, is to avoid  
12:11PM 21 detection, right? So you don't seize cash bribes. If someone  
12:11PM 22 gives you a few thousand dollars in an envelope, you can spend  
12:11PM 23 that in a couple weekends at Wegmans, you can spend that when  
12:11PM 24 you go on vacation to Las Vegas with your wife, or Florida.  
12:11PM 25 Blow some money on a nice hotel, enjoy some extravagant

12:11PM 1 dinners, the cash is gone.

12:11PM 2 So how do we prove it happened to you? Well, in  
12:11PM 3 conspiracies such as this one where people are being  
12:11PM 4 secretive, where they don't want you to catch them, you  
12:11PM 5 oftentimes need an insider, you need someone with access. You  
12:11PM 6 either have to have one of the defendants flip and start  
12:11PM 7 telling you what was going on, or you need an insider. And in  
12:11PM 8 this case, you have Katrina Nigro.

12:11PM 9 And at that time, back in 2000 -- back in early  
12:11PM 10 2000s, 2010 window, Katrina Nigro was someone that this  
12:11PM 11 defendant trusted. He's someone that she picked, that he  
12:11PM 12 picked rather, he picked her. He tried to marry her, but all  
12:11PM 13 the marriage documents were forged by his corrupt judge  
12:12PM 14 friend. But this defendant chose Katrina Nigro, and at the  
12:12PM 15 time he trusted her. He picked her as a witness in this case  
12:12PM 16 when he brought her into his life and involved her in his  
12:12PM 17 criminal activity.

12:12PM 18 So let's talk about what Katrina Nigro told you  
12:12PM 19 regarding bribe payments, and then we'll talk about how you  
12:12PM 20 know you can trust what she's telling you.

12:12PM 21 Ms. Nigro testified that she met Bongiovanni at  
12:12PM 22 Pharaoh's through this defendant, through Peter Gerace. She  
12:12PM 23 testified that the first time she met him he was in the office  
12:12PM 24 hanging out with Peter. And she said over the years, she  
12:12PM 25 socialized with Bongiovanni and Peter together about eight

12:12PM 1 times. Generally, that testimony is corroborated by A.P.,  
12:12PM 2 K.L., Lou Selva, all of whom saw Bongiovanni at Pharaoh's.  
12:12PM 3 It's also corroborated by the text messages that we talked  
12:12PM 4 about a little earlier. So Katrina Nigro is not out on an  
12:12PM 5 island with her testimony that Bongiovanni came to Pharaoh's  
12:12PM 6 and socialized with this defendant.

12:12PM 7 Ms. Nigro also testified about a birthday dinner at  
12:13PM 8 Boss restaurant. She testified that this defendant brought  
12:13PM 9 her to that party, and that before they went she saw the  
12:13PM 10 defendant loading an envelope with cash. That's what he was  
12:13PM 11 doing. She said that he told her at a time when you know he  
12:13PM 12 trusted her -- it's not now, we're not in 2024, this is back  
12:13PM 13 in 2015 -- he tells Katrina Nigro I'm giving him \$5,000,  
12:13PM 14 excuse me. That's corroborated by the text messages in 310D,  
12:13PM 15 pages 11 through 17, where they talk about going to this  
12:13PM 16 dinner at Boss restaurant. These text messages establish that  
12:13PM 17 the defendant went to Bongiovanni's birthday at Boss  
12:13PM 18 restaurant, and that the defendant, Peter Gerace, he brought  
12:13PM 19 two people with him, Katrina and Anthony.

12:13PM 20 \$5,000 in cash. What's that for? Let's talk about  
12:13PM 21 it.

12:13PM 22 \$5,000 in cash in an envelope to a DEA special agent  
12:13PM 23 who's turning 51 years old in 2015.

12:14PM 24 \$5,000. I submit to you that in the context of  
12:14PM 25 everything you know about what was going on in '05, '08, '09,

12:14PM 1 '16, '17, I submit to you in the context of all of that, you  
12:14PM 2 know what \$5,000 in an envelope to Joe Bongiovanni was for.

12:14PM 3 At a minimum, it was at least partially motivated by  
12:14PM 4 a corrupt intent so that this defendant could keep Bongiovanni  
12:14PM 5 on retainer.

12:14PM 6 After this payment at Boss restaurant, Bongiovanni  
12:14PM 7 would later receive a voicemail from him, from Peter Gerace,  
12:14PM 8 saying hey, can you guys track TracFones? Can you ping them  
12:14PM 9 the way cops do? That's after the \$5,000 payment.

12:14PM 10 You know, using your good judgment, your common sense  
12:14PM 11 life experience, that 5,000 bucks in an envelope was a bribe.  
12:15PM 12 Plain and simple. And that's not the only bribe payment you  
12:15PM 13 heard testimony about.

12:15PM 14 Ms. Nigro described for you times when the defendant  
12:15PM 15 wasn't present at Pharaoh's where he asked her to take over  
12:15PM 16 handing money to Bongiovanni. Ms. Nigro described it as  
12:15PM 17 follows, quote: When Peter wasn't in the building and I was  
12:15PM 18 in the office, he would tell me to run an envelope out to  
12:15PM 19 Bongiovanni, and I would meet him by the side door, the door  
12:15PM 20 close to Aero Drive.

12:15PM 21 Hmm, where have we heard that before? Use the  
12:15PM 22 employee entrance on Aero Drive. That sounds so familiar.  
12:15PM 23 That's where the defendant told Bongiovanni to meet him in his  
12:15PM 24 own text messages that Katrina Nigro could have no way of  
12:15PM 25 knowing about. She's corroborated about their own

12:15PM 1 communications with each other.

12:15PM 2 July -- thank you -- July 13th, 2015, just five days  
12:15PM 3 before that \$5,000 payment at Boss restaurant, this defendant  
12:15PM 4 is telling Bongiovanni to use the employee entrance on Aero.

12:15PM 5 She testified that she would hand Bongiovanni  
12:16PM 6 envelopes with what she knew had cash in them. And again,  
12:16PM 7 just use your common sense life experience. If you're over  
12:16PM 8 the age of 18, you know what cash looks like and feels like.  
12:16PM 9 I mean, maybe things are changing now, but most people have  
12:16PM 10 handled cash before in their life. It's always the same  
12:16PM 11 shape, it's always the same length, the same height. Cash is  
12:16PM 12 distinct, U.S. currency, it's obvious. And Katrina Nigro, who  
12:16PM 13 handled money often, it was obvious to her what an envelope  
12:16PM 14 filled with cash was.

12:16PM 15 She testified that she would hand Bongiovanni those  
12:16PM 16 envelopes, and she knew they had cash in them based on how  
12:16PM 17 they felt and what she saw.

12:16PM 18 Ms. Nigro testified that the defendant never told  
12:16PM 19 her -- Peter never told her what the payments were for, and  
12:16PM 20 she never asked. She didn't have the full picture, but you  
12:16PM 21 do.

12:16PM 22 I submit that you know based upon all the evidence  
12:16PM 23 and all the circumstances in this case that it was to keep  
12:17PM 24 Bongiovanni on retainer, to keep him answering when this  
12:17PM 25 defendant called. Those bribe payments gave this defendant

12:17PM 1 power.

12:17PM 2 Now I expect they're going to come here and they're  
12:17PM 3 going to go hard at Katrina. I want you to keep in mind a few  
12:17PM 4 things. Think about what she didn't say, 'cuz if Katrina's  
12:17PM 5 here on some, you know, evil-genius mission to frame Peter  
12:17PM 6 Gerace, why didn't she say things like, oh, the defendant told  
12:17PM 7 me he was being protected by Bongiovanni? She never said  
12:17PM 8 that. That would have helped her evil-genius plan, but she  
12:17PM 9 didn't say that. And I submit to you the reason why she  
12:17PM 10 didn't was because when you're telling the truth, you're  
12:17PM 11 confined by the facts of what actually happened. And he kept  
12:17PM 12 that quiet, he didn't tell her even though he trusted her that  
12:17PM 13 the payments were bribes. She didn't need to know.

12:17PM 14 She never said that she saw Bongiovanni use cocaine  
12:17PM 15 with Gerace. She could have said that. She could have used  
12:17PM 16 her mouth to make those words, but she didn't say those things  
12:17PM 17 even though other people told you they saw it, because Katrina  
12:17PM 18 Nigro was confined by what she actually observed.

12:18PM 19 I submit to you that she didn't testify about those  
12:18PM 20 things because she doesn't know about them. That's one other  
12:18PM 21 way you know that this was not some evil-genius plan by  
12:18PM 22 Katrina. You should find her testimony credible because it's  
12:18PM 23 corroborated by the evidence in the case and other witnesses.

12:18PM 24 Everything we've talked about so far, the entire  
12:18PM 25 universe of information in this case, leads to only one

1 reasonable inference about those envelopes, those payments,  
2 that cash. The only reasonable inference I submit to you is  
3 that Bongiovanni was receiving that money, being paid that  
4 money by this defendant, to be kept on retainer, to step in  
5 when he was needed.

6 The first element, that the defendant gave money to  
7 Joe Bongiovanni, check.

8 The second element, that Bongiovanni was then a  
9 public official, check.

10 The third element, that it was done, those payments  
11 were given with a corrupt intent, check.

12 When you go back, I suggest that you should find him  
13 guilty of Count 2, because his choices and his conduct are  
14 what make him guilty of Count 2.

15 We're going to move a little quicker than I expected  
16 through the last category of proof because I'm running out of  
17 time here. Witness tampering, three counts, 6, 7, and 8,  
18 cover the same incident of witness tampering, so don't get  
19 confused about that it's all one incident, but there's three  
20 different legal theories.

21 So there's -- the statutes are all very slightly  
22 different, but they each charge a violation of the law related  
23 to the November 2019 tampering with P.H.

24 Think about the timeline. April 2019, P.H. is  
25 providing information to federal law enforcement for the very

12:19PM 1 first time.

12:19PM 2 His buddy, Greg Trotter, the detective that he's  
12:19PM 3 exchanging all these texts with, goes out and arrests P.H. for  
12:19PM 4 him basically on command. And there's some unintended  
12:19PM 5 consequences, I submit to you, because when she gets arrested,  
12:20PM 6 somebody at Amherst calls the feds and they come to interview  
12:20PM 7 her. And this defendant, he finds out about it.

12:20PM 8 Shortly after that, P.H.'s attacked in a bar by his  
12:20PM 9 trusted and loyal ally and drug-dealer friend, Charm, Jessica  
12:20PM 10 Leyland.

12:20PM 11 And what does Charm tell P.H.? Quote, I heard you  
12:20PM 12 were talking to the feds. I'm going to fucking kill you, you  
12:20PM 13 snitch.

12:20PM 14 Pretty clear that she's intending that as a threat,  
12:20PM 15 pretty clear that it's in relation to P.H. talking with law  
12:20PM 16 enforcement, and pretty clear that it's in relation to talking  
12:20PM 17 to the feds, which was an interview about him.

12:20PM 18 October 17th, 2019, a few months after that, P.H.  
12:20PM 19 secretly testifies before a federal grand jury. He doesn't  
12:20PM 20 know it.

12:20PM 21 November. A few months after that interview with  
12:20PM 22 federal law enforcement, a few months after Charm, one of his  
12:20PM 23 trusted allies, had attacked P.H. in a bar and called her a  
12:21PM 24 snitch, threatened to kill her, the defendant's downstairs in  
12:21PM 25 a basement with C.C. and Crystal Quinn. And C.C. came here

12:21PM 1 and she testified to you about what happened.

12:21PM 2 And I submit you if you close your eyes, you can  
12:21PM 3 probably picture it. They're down in that basement with the  
12:21PM 4 bar and the dart room -- the dart board, rather, and C.C. told  
12:21PM 5 you that Peter laid out two 8 Balls of cocaine, which I submit  
12:21PM 6 to you is a pretty significant amount for three people to use  
12:21PM 7 in one sitting. And they're getting incredibly high on  
12:21PM 8 cocaine. And this defendant brings up the topic of P.H. being  
12:21PM 9 snitch.

12:21PM 10 And the words that he uses to C.C. and Crystal, he  
12:21PM 11 says, she's a rat, she's a snitch bitch. And C.C. told you he  
12:21PM 12 wasn't joking. I think she was asked that by defense counsel,  
12:21PM 13 I think she said he wasn't joking, he was angry. She  
12:21PM 14 described how the defendant was getting revved up and how he  
12:21PM 15 was getting Crystal Quinn revved up. And that was his close  
12:21PM 16 ally.

12:21PM 17 If you want to think about the control that this  
12:22PM 18 defendant had over Crystal Quinn, Katrina Nigro described  
12:22PM 19 walking into the upstairs one day and seeing Crystal Quinn  
12:22PM 20 doing a line of cocaine off this defendant's genitals. That's  
12:22PM 21 the type of control he had over Crystal.

12:22PM 22 And you know what happens next, it's exactly what  
12:22PM 23 this defendant intended. He gets Crystal Quinn, he induces  
12:22PM 24 her to do what he wants her to do, which is threaten P.H.

12:22PM 25 The defendant later admits when he's in jail awaiting

1 trial on this case, he later admits to Ben Rivera that he  
2 wanted this woman to send a message to P.H., but he was pissed  
3 that she did it by Facebook Messenger 'cuz that's traceable.  
4 I guess hindsight was 20/20 for the defendant.

5 At the time, I submit to you, when he's ripping two  
6 8 Balls of cocaine with Crystal, he was egging her on. What  
7 he told Ben Rivera is that he intended her to send that  
8 message, to call P.H. a snitch.

9 And what does Crystal Quinn say to her? There's some  
10 typos in it because -- I submit to you because Crystal Quinn  
11 was incredibly high on cocaine, and here's what she writes.  
12 I've -- I've done my best to make reasonable inferences and  
13 correct the typos based on where keys are on the keyboard.

14 She says, hey, you rat ass bitch, it's Crystal. I'm  
15 going to see you, and when I do, well, use your imagination,  
16 bitch. You snitch junkie cunt.

17 I'm not gonna read the whole thing right now because  
18 we're running out of time, but the one other sentence in here  
19 I want to hit is: Plan on nothing. Peter knows better, you  
20 fucking narc.

21 "Peter knows better," a reference to this defendant  
22 who she was sitting next to when she sent the message. And  
23 "you fucking narc," narc is interchangeable with rat, it's  
24 interchangeable with snitch. It's exactly what he wanted to  
25 convey to P.H. Shut up. Don't get on that witness stand.

12:23PM 1 Don't talk to law enforcement about me. Shut her down.

12:23PM 2 Attempt after attempt, he sued her in State court.

12:24PM 3 She doesn't have two dimes to rub together. You met P.H.

12:24PM 4 Effort after effort, to prevent her from ever getting in that

12:24PM 5 chair and talking to a room of people like you. He failed,

12:24PM 6 because she came here anyway.

12:24PM 7 Counts 6, 7, and 8 have something called Section 2

12:24PM 8 liability, it's called aiding and abetting, and the judge is

12:24PM 9 going to explain what that means to you and better than I can

12:24PM 10 and in more detail.

12:24PM 11 But aiding and abetting means you don't have to find

12:24PM 12 that the defendant himself sent the messages for him to be

12:24PM 13 guilty of witness tampering. If he induced Crystal Quinn to

12:24PM 14 send the messages, if he caused Crystal Quinn, if he aided and

12:24PM 15 abetted her in doing it, you can find him guilty of witness

12:24PM 16 tampering.

12:24PM 17 I suggest to you that when you review the elements

12:24PM 18 with the judge on Counts 6, 7, and 8, you'll be convinced

12:24PM 19 beyond a reasonable doubt that we've proven each of them to

12:24PM 20 you. Find him guilty of witness tampering with respect to

12:25PM 21 P.H., because his conduct and his choices make him guilty.

12:25PM 22 I want to wrap up. How much time do I have?

12:25PM 23 **MR. TRIPI:** Four minutes.

12:25PM 24 **MR. COOPER:** Four minutes? I'm good. Last page.

12:25PM 25 Let me have some water first.

12:25PM 1 So, I always try to come up with, like, a theme,  
12:25PM 2 right? In these -- when I give an opening statement, a  
12:25PM 3 closing.

12:25PM 4 And the defense attorneys, in their opening  
12:25PM 5 statement, their theme was choices. They told you this case  
12:25PM 6 is all about choices. They made choices. These women all  
12:25PM 7 made choices. G.R., L.L., wait until you hear from them.

12:25PM 8 Now you've heard from them, and I agree, I'm taking  
12:25PM 9 the theme, I love it, this case is about choices. It's about  
12:25PM 10 his choices. It's about the defendant's decision, his choice,  
12:25PM 11 to turn a strip club into a drug-infested dungeon where the  
12:26PM 12 chains of addictions keep young women coming back every single  
12:26PM 13 day so that this defendant could profit a little more off of  
12:26PM 14 the exploitation of their body.

12:26PM 15 His choice to make that his business model. He did  
12:26PM 16 it because it got him rich. Like when Wayne VanVleet was  
12:26PM 17 dropping thousands of dollars from his pockets to lick and  
12:26PM 18 finger drug addicts until he came in his pants, he did it  
12:26PM 19 because it gave him constant access to drug-addicted women  
12:26PM 20 that he could sexually exploit himself.

12:26PM 21 He did it because when you have powerful people like  
12:26PM 22 Judge Michalski going upstairs to have sex with the vulnerable  
12:26PM 23 drug-addicted women, you become powerful. You get forged  
12:26PM 24 marriage certificates when the judge signs the protective  
12:26PM 25 order on controlled buys going on in your club, that was Judge

12:26PM 1 Michalski.

12:26PM 2 When you cater to the elicit sexual desires of  
12:26PM 3 powerful men, you become powerful, and that's another reason  
12:27PM 4 that he did.

12:27PM 5 This trial's about the defendant's decision to enter  
12:27PM 6 into a corrupt agreement to with DEA Special Agent Joe  
12:27PM 7 Bongiovanni, to protect him, to keep him on retainer, to  
12:27PM 8 provide protection on an as-needed basis.

12:27PM 9 It's about the defendant's decision to cause Crystal  
12:27PM 10 Quinn and induce her to threaten P.H., to keep her off that  
12:27PM 11 witness stand, something that only he benefited from.

12:27PM 12 They were right. This case is about choices. And  
12:27PM 13 this defendant, he made his choices.

12:27PM 14 You've heard during the last two months about nearly  
12:27PM 15 two decades of Peter Gerace's choices. And choices have  
12:27PM 16 consequences.

12:27PM 17 When you go in the back to deliberate, I ask you to  
12:27PM 18 apply a simple formula: Facts, plus law, equals verdict.

12:27PM 19 If you focus on that, and if you bring your common  
12:27PM 20 sense life experience into that room with you, I expect that  
12:28PM 21 you will return a verdict that's consistent with justice in  
12:28PM 22 this case, and that will be a verdict of guilty on each and  
12:28PM 23 every single count in the indictment.

12:28PM 24 I appreciate your patience listening to me talk for  
12:28PM 25 three hours. In a little while, Mr. Tripi's going to come up

12:28PM 1 on rebuttal, but I want to say thank you for your close  
12:28PM 2 attention over the course of the last two months on behalf of  
12:28PM 3 myself, and Casey Chalbeck, and Joe Tripi, and the United  
12:28PM 4 States.

12:28PM 5 **THE COURT:** Okay. Thank you. Folks, we are now  
12:28PM 6 going to take our lunch break, we'll go 45 minutes, so back  
12:28PM 7 here at 1:15.

12:28PM 8 Please remember my instructions still about not  
12:28PM 9 communicating about the case. Don't use tools of technology  
12:28PM 10 in any way whatsoever to learn anything about the case or to  
12:28PM 11 communicate about the case. If there's any news coverage of  
12:28PM 12 the case on the TV or radio or anywhere, on computers,  
12:28PM 13 newspapers, don't read or watch or listen to it. And please  
12:28PM 14 don't make up your mind until you start deliberating, which  
12:29PM 15 will probably be tomorrow morning.

12:29PM 16 So, 1:15. Thanks, very much.

12:29PM 17 (Jury excused at 12:29 p.m.)

12:29PM 18 **THE COURT:** Okay. Anything before we break?

12:29PM 19 **MR. COOPER:** Nothing from us, Judge.

12:29PM 20 **MR. FOTI:** No.

12:29PM 21 **THE COURT:** I just want to briefly address  
12:29PM 22 Mr. Tripi's and Mr. Soehnlein's letters from -- from  
12:29PM 23 yesterday.

12:29PM 24 **MR. TRIPI:** Yes.

12:29PM 25 **THE COURT:** I didn't see a lot of disagreement

12:29PM 1 between the two of them actually. I think Mr. Soehnlein's  
12:30PM 2 pitch was they have not opened the door to anything yet, and I  
12:30PM 3 didn't read your letter as suggesting that they had.

12:30PM 4 **MR. TRIPI:** Yeah, Judge, I -- I -- I focused on their  
12:30PM 5 summation and what I -- the permissible bounds of rebuttal.  
12:30PM 6 In Mr. Soehnlein's responsive letter, he indicated that he --  
12:30PM 7 they've not opened the door just by virtue of their cross.  
12:30PM 8 Can -- I agree that -- with what you just said. Candidly,  
12:30PM 9 I've not yet done the research on whether a cross alone can  
12:30PM 10 open it, I've had someone looking into it. If I find  
12:30PM 11 anything, I'll let you know. But I -- I -- as I stand here in  
12:30PM 12 this moment in time, I agree.

12:30PM 13 **MR. FOTI:** Judge --

12:30PM 14 **THE COURT:** The other -- the other issue would be is  
12:30PM 15 it truly rebuttal if you bring it up in rebuttal. In other  
12:30PM 16 words --

12:30PM 17 **MR. TRIPI:** Well, right.

12:30PM 18 **THE COURT:** Yeah. So --

12:30PM 19 **MR. TRIPI:** I have never seen a case where they've  
12:30PM 20 opened it in cross, but I wanted to take a look.

12:30PM 21 **THE COURT:** Yeah. But if they did open it in cross,  
12:31PM 22 then Mr. Cooper should have said something about it --

12:31PM 23 **MR. TRIPI:** Yes.

12:31PM 24 **THE COURT:** -- not you in rebuttal.

12:31PM 25 **MR. TRIPI:** Well --

12:31PM 1           **MR. FOTI:** Judge, I -- I didn't see Mr. Soehnlein's  
12:31PM 2 submission, and I'm doing the closing. Part of that was  
12:31PM 3 because I was focused on the closing yesterday. But I  
12:31PM 4 certainly -- and it would be good to sort of parse this out  
12:31PM 5 now so I know how to -- to appropriately fashion this  
12:31PM 6 discussion in my closing. But I do intend to, like, I think  
12:31PM 7 every defense closing I've ever seen or done talk about  
12:31PM 8 insufficiency of evidence and witnesses you that didn't hear.  
12:31PM 9 And I understand -- I read Mr. Tripi's submission, and I  
12:31PM 10 understand the argument that can be made while defendants --  
12:31PM 11 defense attorneys have subpoena power too, I don't really have  
12:31PM 12 an objection to that comment being made at some point during  
12:31PM 13 the rebuttal. I -- what I would object to is burden  
12:31PM 14 shifting --

12:31PM 15           **THE COURT:** Right.

12:31PM 16           **MR. FOTI:** When you say anything beyond that when  
12:31PM 17 you're saying they should have called witnesses, you could  
12:31PM 18 expect that those witnesses would've testified favorably for  
12:31PM 19 the government --

12:31PM 20           **THE COURT:** Yep.

12:31PM 21           **MR. FOTI:** -- that shifts the burden.

12:31PM 22           **THE COURT:** And I -- and I would go one step further  
12:31PM 23 and say that anything you say needs to reenforce that the  
12:31PM 24 defendant does not have a burden.

12:32PM 25           **MR. TRIPI:** Yeah, I think I dropped a footnote in how

12:32PM 1 I usually say it, or the gist of what I usually say.

12:32PM 2       **THE COURT:** Yeah.

12:32PM 3       **MR. TRIPI:** And I was -- I actually do think the  
12:32PM 4 caselaw, not to go as far as he's concerned about, the caselaw  
12:32PM 5 actually permits the government to go a half a step further  
12:32PM 6 than I had done in the past which is to say you can infer that  
12:32PM 7 those witnesses would not have helped the defense, that's not  
12:32PM 8 a burden shift under the 2nd Circuit. And so I've never  
12:32PM 9 actually gone that far, I guess it would be a matter of degree  
12:32PM 10 when I hear the defense.

12:32PM 11       **THE COURT:** Yeah. And I -- I just want you to  
12:32PM 12 cautious because I think that -- that any -- any remarks you  
12:32PM 13 make in that regard ought to be couched in the context of  
12:32PM 14 we've got the burden.

12:32PM 15       **MR. TRIPI:** I always do that. I've always done that.

12:32PM 16       **THE COURT:** Okay. Good. Then we're all on the same  
12:32PM 17 page it sounds like.

12:32PM 18       **MR. TRIPI:** Yes.

12:32PM 19       **THE COURT:** Mr. Tripi, I think you have 32 minutes by  
12:32PM 20 my time.

12:32PM 21       **MR. TRIPI:** I have 31. I'll graciously take the  
12:32PM 22 extra minute.

12:32PM 23       **THE COURT:** Yeah. I -- I was paying pretty close  
12:32PM 24 attention, and I had that at two minutes short of three hours,  
12:32PM 25 so --

12:33PM 1 Okay. So, we will be back at 1:15. You're ready to  
12:33PM 2 go then. You're still thinking two, two and a half?

12:33PM 3 **MR. FOTI:** Yeah, probably about that, yeah.

12:33PM 4 **THE COURT:** Good. Great. Terrific. Again, you've  
12:33PM 5 got three and a half.

12:33PM 6 **MR. FOTI:** Understood.

12:33PM 7 **THE COURT:** So I'm not cutting you off at all. And  
12:33PM 8 if you want to take a break at any point, that's fine. If you  
12:33PM 9 want to go right through, that's fine, too.

12:33PM 10 **MR. FOTI:** Okay, thanks.

12:33PM 11 **THE COURT:** Okay. Thanks, everybody.

12:33PM 12 **MR. TRIPI:** Thanks, Judge.

12:33PM 13 **THE CLERK:** All rise.

12:33PM 14 (Off the record at 12:33 p.m.)

01:16PM 15 (Back on the record at 1:16 p.m.)

01:16PM 16 (Jury not present.)

01:16PM 17 **THE REPORTER:** All rise.

01:16PM 18 **THE COURT:** Please be seated.

01:16PM 19 **MR. COOPER:** I think I'm missing my better half here.  
01:16PM 20 He said he was on his way two minutes ago, so he should be  
01:16PM 21 here.

01:16PM 22 **THE COURT:** That's okay.

01:18PM 23 **THE CLERK:** We are back on the record for the  
01:18PM 24 continuation of the jury trial in case numbers 19-cr-227 and  
01:18PM 25 23-cr-37, United States of America versus Peter Gerace, Jr.

01:18PM 1 All counsel and parties are present.

01:18PM 2 **THE COURT:** Are we ready to go?

01:18PM 3 **MR. FOTI:** Yes, Judge. I meant to ask earlier, are  
01:18PM 4 we permitted to use the verdict sheet? Or, I don't know if we  
01:18PM 5 ever -- if there was any ever determination of whether the  
01:18PM 6 proposed verdict sheet was all set, but --

01:18PM 7 **THE COURT:** If -- if both sides approved the verdict  
01:19PM 8 sheet?

01:19PM 9 **MR. FOTI:** We didn't have any objection to it.

01:19PM 10 **MR. COOPER:** We don't have any objection to the  
01:19PM 11 proposed verdict sheet, Judge. I looked at it the other day  
01:19PM 12 when it was brought over.

01:19PM 13 **THE COURT:** Okay. And do you have any objection to  
01:19PM 14 him using it with the jury?

01:19PM 15 **MR. COOPER:** Like showing it to them?

01:19PM 16 **MR. FOTI:** Yeah, yes.

01:19PM 17 **MR. COOPER:** No, they're going to see it anyway.

01:19PM 18 **THE COURT:** Yeah, great.

01:19PM 19 Okay. Let's bring them in, please, Pat.

01:22PM 20 (Jury seated at 1:22 p.m.)

01:22PM 21 **THE COURT:** The record will reflect that all our  
01:23PM 22 jurors again are present.

01:23PM 23 Mr. Foti, you may begin.

01:23PM 24 **MR. FOTI:** Thank you, Your Honor.

01:23PM 25 Good afternoon.

01:23PM 1           **THE JURORS:** Good afternoon.

01:23PM 2           **MR. FOTI:** So, it's kind of a weird dynamic because  
01:23PM 3 we've spent almost two months together, but this is the first  
01:23PM 4 time I actually get to talk to you directly. You heard my  
01:23PM 5 name, I'm Mark Foti. Along with my cocounsel, my tall and  
01:23PM 6 nerdy friend and cocounsel, Eric Soehnlein, we represent Peter  
01:23PM 7 Gerace.

01:23PM 8           Now, I may refer to him sometimes as Mr. Gerace, and  
01:23PM 9 sometimes I may refer to him as Peter. That's how I know him.  
01:23PM 10 You'll know who I'm talking about when I do.

01:23PM 11           He sat there for two months just listening to  
01:23PM 12 witnesses that the government cherry picked out of over  
01:23PM 13 15 years of his life to come in here and sling mud at him.

01:23PM 14           He sat there for two months just watching these  
01:23PM 15 witnesses get up on the stand, witnesses who were paid,  
01:24PM 16 witnesses who had charges pending, witnesses who had  
01:24PM 17 credibility issues, and he took it, and he endured. And he  
01:24PM 18 did it because he knew that at some point we were going to  
01:24PM 19 come to the moment that we're almost at, the moment when you  
01:24PM 20 folks are finally going to have this case, the moment when you  
01:24PM 21 folks are finally going to be able to evaluate the evidence in  
01:24PM 22 this case.

01:24PM 23           Now your job, and I know you know this, your job  
01:24PM 24 doesn't end with what the government tells you to think. Your  
01:24PM 25 job doesn't end when the government gets up here and tells

01:24PM 1 you, well, you heard these things from this witness, so you  
01:24PM 2 should just accept that as fact. That's clearly not how this  
01:24PM 3 works.

01:24PM 4 The government referred to something Mr. Soehnlein  
01:24PM 5 said in his opening statement that this is a case about  
01:25PM 6 choices. And I understand why the government made the point  
01:25PM 7 it did and said there are allegations here that Mr. Gerace  
01:25PM 8 made bad choices related to the charges. They told you that  
01:25PM 9 there's choices here that you can consider related to things  
01:25PM 10 that have been alleged against Mr. Gerace, and that is part of  
01:25PM 11 this case.

01:25PM 12 There's a lot of choices that are part of this case.  
01:25PM 13 There are the choices of individuals to apply and work at a  
01:25PM 14 strip club. To do drugs for the very first time. To continue  
01:25PM 15 using drugs. To engage in commercial sex acts, whether  
01:25PM 16 Mr. Gerace knew about it or not, whether they were happening  
01:25PM 17 in or out of the club. Those are all choices.

01:25PM 18 There's also choices of investigators, individuals  
01:25PM 19 who had the decision on how to collect evidence for this case,  
01:25PM 20 what to present to you. And the decisions of what tactics not  
01:25PM 21 to pursue, even though it would mean less evidence for you to  
01:26PM 22 consider.

01:26PM 23 There's the choices of witnesses. To lie. To lie to  
01:26PM 24 investigators when they go talk to them. To lie at the grand  
01:26PM 25 jury. To lie in subsequent meetings with the government, and

01:26PM 1 to lie at all these other proceedings under oath. Those are  
01:26PM 2 the decisions of the witnesses, many of whom testified before  
01:26PM 3 you during this trial.

01:26PM 4 And there's the decisions by prosecutors to call  
01:26PM 5 those witnesses anyway knowing that they've lied in the past,  
01:26PM 6 and carefully cure their direct examinations as much as  
01:26PM 7 possible to steer away from reality, to steer away from all  
01:26PM 8 their biases and, instead, present you with a narrative  
01:26PM 9 consistent with what they were trying to sell you throughout  
01:26PM 10 this case.

01:26PM 11 But this is not just a case about choices, this is a  
01:26PM 12 case about government overreach.

01:27PM 13 At the beginning of the trial, Mr. Soehnlein talked  
01:27PM 14 about all the resources the government has. I, during the  
01:27PM 15 cross-examination of Mr. Burns, went through a long list of  
01:27PM 16 dozens of names of agents who were involved in interviews  
01:27PM 17 related to this investigation or, as clarified, some sort of  
01:27PM 18 offsets of the investigation. They, on redirect it was  
01:27PM 19 pointed out that that number can be inflated when you count  
01:27PM 20 all of those individuals who are involved at different points  
01:27PM 21 like search warrants.

01:27PM 22 You saw this courtroom just completely filled up a  
01:27PM 23 few moments ago, of people who came in support of the  
01:27PM 24 government in this case. Those resources are endless. The  
01:27PM 25 resources to provide financial benefits to witnesses, the

01:27PM 1 ability to put charges on individuals and use it as leverage.

01:27PM 2 But despite all those resources and despite the fact

01:27PM 3 that Mr. Gerace is one man, and we're two attorneys and a

01:28PM 4 paralegal, representing here and presenting a defense, it all

01:28PM 5 does balance out. And it balances out because of you folks.

01:28PM 6 And it balances out because if do you your job and you follow

01:28PM 7 the instructions, it's not about just what the government

01:28PM 8 collected as part of their resources, and what they curated to

01:28PM 9 present to you. It becomes about something much bigger than

01:28PM 10 that.

01:28PM 11 This is a case where, like any criminal case, you

01:28PM 12 apply a standard of proof, of proof beyond a reasonable doubt.

01:28PM 13 And you presume Mr. Gerace innocent.

01:28PM 14 We say those things all the time. You heard it at

01:28PM 15 the beginning of the trial. But that's powerful stuff when

01:28PM 16 you stop and think about what your responsibility is here

01:28PM 17 about how things are balanced out and how Mr. Gerace gets a

01:28PM 18 fair trial. It's not that a scenario is presented to you

01:28PM 19 factually and the government argues there's an inference you

01:29PM 20 could draw, and you just have to accept that inference because

01:29PM 21 that's the one the government selected. It's not that at all.

01:29PM 22 If there's other inferences, if there's other reasonable

01:29PM 23 hypothesis of innocence.

01:29PM 24 You're presuming Mr. Gerace innocent. You're holding

01:29PM 25 the government to the burden. You are going to look at the

01:29PM 1 evidence and evaluate and look at all the different reasons  
01:29PM 2 why the one version of events and the one argument the  
01:29PM 3 government presented may not be correct.

01:29PM 4 Now, I want to talk to you a little bit more about  
01:29PM 5 proof beyond a reasonable doubt.

01:29PM 6 The government acknowledges their burden, they  
01:29PM 7 reference it, but they don't talk about it in great detail  
01:29PM 8 during their closing. I want to talk about it a little bit  
01:29PM 9 more before we go into -- to some the case.

01:29PM 10 The judge is going to instruct you on the law. And  
01:29PM 11 when the judge instructs you on the law, anything he says  
01:29PM 12 obviously goes in terms of that. I'm going to talk a little  
01:29PM 13 bit about what I expect you'll hear generally. I don't --  
01:30PM 14 nothing I'm gonna say is anything other than my expectation as  
01:30PM 15 to what you'll hear from -- from Judge Vilardo.

01:30PM 16 Reasonable doubt is a doubt that a reasonable person  
01:30PM 17 has after carefully weighing all the evidence or lack of  
01:30PM 18 evidence. It's a doubt that would cause a reasonable person  
01:30PM 19 to hesitate in a matter of importance in his or her personal  
01:30PM 20 life.

01:30PM 21 Proof beyond a reasonable doubt must be proof that's  
01:30PM 22 so convincing that a reasonable person would not hesitate to  
01:30PM 23 rely upon it in making an important decision.

01:30PM 24 I expect you're gonna hear words similar to that from  
01:30PM 25 Judge Vilardo, and I want you to focus on that, the idea of

01:30PM 1 hesitation. That's the way this is framed for you. That if  
01:30PM 2 you are hesitant to accept something as being true, or even if  
01:30PM 3 you don't necessarily hesitate but you think a reasonable  
01:30PM 4 person would hesitate, that's reasonable doubt. That's it.

01:31PM 5 That is so simple, and yet so powerful, and is the  
01:31PM 6 reason Mr. Gerace gets a fair trial. And it is a reason that  
01:31PM 7 we've been waiting for you this entire time.

01:31PM 8 Now, mindful of those points, the closing remarks I'm  
01:31PM 9 going to give you are not intended in any way to limit the  
01:31PM 10 potential reasonable doubt in this case, not at all. I'm not  
01:31PM 11 any smarter than any of you folks. As smart as Mr. Soehnlein  
01:31PM 12 may be, he's not any smarter than any of you folks. Each one  
01:31PM 13 of you, when evaluating the evidence, are in a position to  
01:31PM 14 pick up on inconsistencies, pick up on things that didn't make  
01:31PM 15 sense, pick up on things about the government's argument that  
01:31PM 16 were not complete or were not fair.

01:31PM 17 And when you think of those things for the charges,  
01:31PM 18 you're not limited to say, well, the defense didn't bring that  
01:32PM 19 up. That's not at all the case. We could have not gotten up  
01:32PM 20 here at all to talk to you at all during the closing. It  
01:32PM 21 wouldn't matter, you would still go back and do your job. You  
01:32PM 22 would still hold the government to their burden. You would  
01:32PM 23 still push back against government overreach.

01:32PM 24 I don't expect that I'm going to be as dynamic as  
01:32PM 25 Mr. Cooper. I'm certainly not going to be able to hit the

01:32PM 1 same volume that he hits. It doesn't matter.

01:32PM 2 In the end, we're relying on you, and all I'm gonna  
01:32PM 3 do over the course of the next -- I -- I hesitate to estimate,  
01:32PM 4 I don't think it will be as long as the government's comments,  
01:32PM 5 but over -- during the course of this closing, I'm just gonna  
01:32PM 6 point out some observations, some observations about the proof  
01:32PM 7 that I think are points of reasonable doubt, and some  
01:32PM 8 observations about the arguments that have been presented to  
01:32PM 9 you by the government. Why I don't think they really hold up  
01:32PM 10 when you look at things a little bit closer when you  
01:32PM 11 critically evaluate the evidence in regards to -- to the  
01:32PM 12 charges that are before you.

01:33PM 13 So, my comments are not going to be perfectly  
01:33PM 14 organized. I have a little bit of an outline that I'm  
01:33PM 15 referring to, but I'm not reading off a script. I am going to  
01:33PM 16 talk to you generally about, first, the background of this  
01:33PM 17 case, what leads up to it. What leads up to the charges of  
01:33PM 18 Mr. Gerace. Things that you heard in the evidence that you  
01:33PM 19 can piece together to -- to better understand how this all  
01:33PM 20 came about.

01:33PM 21 Then I'm going to talk to you about the evidence, the  
01:33PM 22 lack of evidence, and I'll review the charges with you. And  
01:33PM 23 then I'll finish up with some closing remarks. Okay?

01:33PM 24 So, where did this case begin two months ago?

01:33PM 25 It seems like a lifetime ago, but if we look back to

01:33PM 1 the first few witnesses after Mr. Bongiovanni's ex-girlfriend,  
01:33PM 2 we were talking about a search in 2009. So we are already  
01:34PM 3 going back about 15 years.

01:34PM 4 Now, what happened in 2009? You heard testimony from  
01:34PM 5 a probation officer, Probation Officer Lepiane. You heard  
01:34PM 6 testimony from an FBI agent.

01:34PM 7 An interesting thing happened at the very beginning  
01:34PM 8 of the case on direct examination. There was discussion of  
01:34PM 9 what the search was going to be of Pharaoh's. And during the  
01:34PM 10 direct examination, there was very little reference to the  
01:34PM 11 fact that part of the discussions leading up to the search, a  
01:34PM 12 whole lot what was going on behind the scenes in terms of the  
01:34PM 13 investigation was that they didn't know if there was drugs at  
01:34PM 14 Pharaoh's.

01:34PM 15 They had heard from two individuals in August, two  
01:34PM 16 individuals who ended up being witnesses here today, or in  
01:34PM 17 this trial, that there was drug use in Pharaoh's. K.L., G.R.  
01:34PM 18 And by the way, what was represented by them was very  
01:34PM 19 different than what they're testifying to 15 years later. You  
01:35PM 20 heard a little bit about that with Ms. K.L., and we'll talk  
01:35PM 21 about that in a little while.

01:35PM 22 But they have information that they're going to  
01:35PM 23 pursue, try to corroborate, to determine whether these  
01:35PM 24 witnesses are credible, whether there's actual -- actual proof  
01:35PM 25 consistent what they've heard. And they agreed to do a search

01:35PM 1 at Pharaoh's in 2009, and it was specifically done on  
01:35PM 2 Halloween morning, a Saturday morning, assuming that there's  
01:35PM 3 going to be partying the night before on a Friday night,  
01:35PM 4 parties related to -- to -- to Halloween.

01:35PM 5 And on the morning of -- the early hours of the  
01:35PM 6 morning, only a few hours after the place closes, multiple law  
01:35PM 7 enforcement agencies show up. The FBI's there, probation is  
01:35PM 8 there, and the Cheektowaga police is there. There's K-9  
01:35PM 9 units. They go in to Pharaoh's, and they don't find any drugs  
01:35PM 10 at all. This is 2009.

01:35PM 11 This is part of the case that's been presented to you  
01:36PM 12 because, as we're going to talk about in a little bit, they  
01:36PM 13 give you such a wide spread of time, and they give strategic  
01:36PM 14 advantages to the government in their presentation of proof,  
01:36PM 15 how they can cherry pick evidence.

01:36PM 16 But we go all the way back to 2009, they're alleging  
01:36PM 17 this is a drug premises at the time. They're alleging back in  
01:36PM 18 2009 there is a conspiracy to distribute controlled substances  
01:36PM 19 from Pharaoh's. And they go in there in the early hours of  
01:36PM 20 the morning on Halloween and they don't find drugs, they don't  
01:36PM 21 find paraphernalia, they don't find wrapping, packaging  
01:36PM 22 associated with it. They don't find anything that  
01:36PM 23 corroborates the rumors and allegations that had amounted to a  
01:36PM 24 belief that Peter Gerace is distributing drugs out of  
01:36PM 25 Pharaoh's back in 2009.

01:36PM 1           There was video at Pharaoh's back in 2009. You heard  
01:36PM 2 testimony about that. Nobody could remember whether they  
01:36PM 3 seized it, whether they looked at it, whether they went  
01:36PM 4 through it at all. I think you would probably find that if  
01:37PM 5 they did, they would find something very similar to the video  
01:37PM 6 that was seized in 2019. Nothing of relevant value. No drug  
01:37PM 7 use. No drug transactions. No drugs on -- anywhere on the  
01:37PM 8 cameras that are recording constantly. A business that makes  
01:37PM 9 sure that they have close to 50 cameras throughout the place  
01:37PM 10 not just live streaming, but recording so that there is  
01:37PM 11 evidence of what is going on in that club.

01:37PM 12           We don't really know much about what was seized or  
01:37PM 13 what was looked at back then. Maybe they didn't look at the  
01:37PM 14 cameras, but they were there. There were cameras back then,  
01:37PM 15 you heard testimony of that. No drugs, no video, no evidence  
01:37PM 16 at all of drugs back in 2009. And no charges. No criminal  
01:37PM 17 charges.

01:37PM 18           And we're going to talk about the Bongiovanni-related  
01:37PM 19 component of those charges in a little bit. You heard just on  
01:37PM 20 the closing argument the very first thing they're talking  
01:37PM 21 about, well, one of the very first things they're talking  
01:38PM 22 about is this search in 2009 suggesting that somehow  
01:38PM 23 Mr. Bongiovanni derails the investigation.

01:38PM 24           The investigation that Tom Herbst had wasn't with  
01:38PM 25 Mr. Bongiovanni. He didn't defer to Mr. Bongiovanni.

01:38PM 1 Mr. Bongiovanni wasn't his supervisor. Tom Herbst spoke to  
01:38PM 2 the U.S. Attorney's Office, he was speaking to prosecutors.  
01:38PM 3 They're the ones who were going to make the decision on  
01:38PM 4 whether to pursue charges. And no charges come out of it.

01:38PM 5 The whole idea that Mr. Bongiovanni had anything to  
01:38PM 6 do with it makes no sense. There's no allegation that  
01:38PM 7 Mr. Bongiovanni ever talked to the prosecutor.

01:38PM 8 The reality is there was no evidence of it. That's  
01:38PM 9 why it died back in 2009.

01:38PM 10 And as this case went forward, you heard a little  
01:38PM 11 indicia and snippets of things that were going on behind the  
01:38PM 12 scenes. It wasn't presented during direct examination, it  
01:38PM 13 wasn't really presented to you, it was generally inconsistent  
01:38PM 14 with the idea that Mr. Bongiovanni put a cloak over Pharaoh's  
01:38PM 15 and it was protected. But during the cross-examinations it  
01:38PM 16 came out that there were other attempts to investigate  
01:39PM 17 Pharaoh's at various times over the course of the decade,  
01:39PM 18 multiple attempts at undercover buys.

01:39PM 19 We don't know the full extent of any of that. We  
01:39PM 20 just know that no evidence came out of it that was -- was put  
01:39PM 21 in front of you during the course of this trial.

01:39PM 22 So, 2009. The next search is ten years later. What  
01:39PM 23 happens in between?

01:39PM 24 Katrina Nigro, divorce. Okay? She got mentioned  
01:39PM 25 just a few times on the government's closing. Which is

01:39PM 1 surprising, because she's really the inception of this entire  
01:39PM 2 investigation. She really is their star witness.

01:39PM 3 Katrina Nigro, in 2016, before she ever connects with  
01:39PM 4 the U.S. Attorney's Office, is telling Peter Gerace in  
01:39PM 5 voicemails, I will destroy you. I will have your kids taken  
01:39PM 6 away. She's calling CPS and -- you saw the moment on the  
01:40PM 7 stand, I'm sure you recall that -- that was counselors, they  
01:40PM 8 were doing it. Then confronted in fact that she told -- she  
01:40PM 9 acknowledged the government at some point earlier she had,  
01:40PM 10 okay, yeah, I called one time, the rest were counselors, that  
01:40PM 11 was it.

01:40PM 12 What about the email you sent from hornyhamster69?

01:40PM 13 Okay, yeah, I did send that too.

01:40PM 14 Just lying to you, and changing her testimony as  
01:40PM 15 she's confronted. A pattern that you saw with multiple  
01:40PM 16 witnesses in this trial.

01:40PM 17 Katrina Nigro, back in 2016, was saying I will  
01:40PM 18 destroy your life. She was trying to put false charges on  
01:40PM 19 Mr. Gerace.

01:40PM 20 She, herself, was charged with criminal contempt  
01:40PM 21 after being told Mr. Gerace doesn't want to pursue charges  
01:40PM 22 against you, just leave him alone. She continued and  
01:40PM 23 continued until she was charged. Then she continued again  
01:40PM 24 after a judge told her do not have contact, and she was  
01:40PM 25 charged again. Then she continued again, and she was charged

01:40PM 1 again.

01:40PM 2 The government put up text messages suggesting that  
01:41PM 3 she's -- that because Peter Gerace was talking to friends  
01:41PM 4 about it, because they were laughing about the fact that she  
01:41PM 5 couldn't stop, she wouldn't leave him alone, and that she was  
01:41PM 6 finally charged, that somehow she's the victim of that all  
01:41PM 7 that?

01:41PM 8 She was making choices to continue on, to continue to  
01:41PM 9 try to be involved in Peter Gerace's life despite a court  
01:41PM 10 telling you to stop. And she admitted that she had a spoof --  
01:41PM 11 or, excuse me, a stalker Facebook account, an account that she  
01:41PM 12 had for some business and she changed it to a fake name so she  
01:41PM 13 could use it to -- as a stalker Facebook account, that was her  
01:41PM 14 words.

01:41PM 15 She used spoof phone numbers, and said something  
01:41PM 16 about, oh, Peter's the one who taught me how to do that.  
01:41PM 17 There's no evidence of that whatsoever other than her saying  
01:41PM 18 that. What we know is that she owns up, yeah, I admitted in  
01:41PM 19 the past that, yes, I was using spoof phone numbers to call  
01:41PM 20 Peter.

01:41PM 21 And what's more significant than the fact that she  
01:42PM 22 was violating a court order and that she wouldn't leave him  
01:42PM 23 alone and there's this clear bias that exists, is what else  
01:42PM 24 she was doing at that timeframe. She kept trying to put false  
01:42PM 25 charges on Mr. Gerace. She demonstrated all the way back then

01:42PM 1 what she's willing to do.

01:42PM 2 And, by the way, she didn't just try once. She  
01:42PM 3 didn't just try twice or three times. She went from police  
01:42PM 4 agency to police agency.

01:42PM 5 The government may have made some arguments here,  
01:42PM 6 well, Detective Trotter ends up being friends with Mr. Gerace  
01:42PM 7 and ends up having some communication with him along the way,  
01:42PM 8 maybe he's the one driving all of this against Katrina Nigro.  
01:42PM 9 That's totally bogus.

01:42PM 10 She went to the state police first, and she said oh,  
01:42PM 11 it was because of the geographical location that I went to  
01:42PM 12 them. That's why I didn't go to Amherst, I went to the state  
01:42PM 13 police first.

01:42PM 14 But then when they vet the charges and realize  
01:42PM 15 they're bogus, and they don't charge her with anything at that  
01:42PM 16 point, they just say well, you know, this -- this is not  
01:42PM 17 legitimate, we can't file charges based on what you're  
01:43PM 18 presenting us with. She just keeps going to different police  
01:43PM 19 agencies until she's finally charged by the Erie County  
01:43PM 20 Sheriff's Office with filing charges -- or, filing false  
01:43PM 21 reports against Mr. Gerace.

01:43PM 22 That's who Katrina Nigro is. Somebody who is willing  
01:43PM 23 to use the government to pursue her grudge against Mr. Gerace.  
01:43PM 24 She demonstrated that back in 2016. Back when she was telling  
01:43PM 25 him she is going to ultimately destroy him. That's her

01:43PM 1 objective.

01:43PM 2 Now, what happens in 2019? The next search at  
01:43PM 3 Pharaoh's that you've heard about.

01:43PM 4 And is this one really different than the last one?  
01:43PM 5 You saw pictures yesterday pulled up exhibits of some of the  
01:43PM 6 proof of drugs. Did anybody realistically look at those  
01:43PM 7 pictures and think, oh, yeah, that's consistent with drug  
01:43PM 8 trafficking? A couple packages of, like, a -- like a vape pen  
01:43PM 9 or something like that? A couple of tiny things in the  
01:43PM 10 entirety of Pharaoh's in 2019?

01:44PM 11 And they seized the video, and they go back and look  
01:44PM 12 at weeks worth of video, and don't see on a single camera any  
01:44PM 13 footage showing any drugs at all. No perceived drug  
01:44PM 14 transactions, no contraband, nothing.

01:44PM 15 But 2019 was different than 2009. Some of you may  
01:44PM 16 have a number of ideas why it was. There's one in particular  
01:44PM 17 that I want to talk about.

01:44PM 18 2019, you heard the search was publicized.

01:44PM 19 2009, they did it in the early hours of the morning,  
01:44PM 20 they made efforts to keep it quiet, to just go in, see if the  
01:44PM 21 drugs were there, and leave.

01:44PM 22 What did they do in 2019? They put it on the news.

01:44PM 23 And what was that? That was a beacon to anybody who  
01:44PM 24 had a grudge against Mr. Gerace, anybody who wanted a benefit  
01:44PM 25 from the government, anybody who was willing to get lined up

01:45PM 1 to take that stand and receive something in return.

01:45PM 2 That's the difference between 2019 and 2009. And  
01:45PM 3 that's why we're here today.

01:45PM 4 Because when it goes up on the news, what happens?

01:45PM 5 Katrina Nigro gets on the phone, calls a hotline, says I have  
01:45PM 6 all kinds of information about Mr. Gerace.

01:45PM 7 Not the first time she makes a false report. It's  
01:45PM 8 not the last time she makes a false report. But she responds  
01:45PM 9 to the publicity, and immediately we're off to the races.

01:45PM 10 What happens after Katrina Nigro gets in contact with  
01:45PM 11 the government, they meet next month and she goes in the grand  
01:45PM 12 jury? They form what she described as a partnership. And  
01:45PM 13 that is what the evidence shows. Katrina Nigro is the one  
01:45PM 14 that launches this whole thing.

01:45PM 15 Yes, there were witnesses that made allegations way  
01:45PM 16 back in '09. Nothing came of it.

01:45PM 17 K.L. in '09 said there was drugs. She didn't say  
01:46PM 18 anything about what she ultimately testified to here. She  
01:46PM 19 said there were Lortabs in the club that she could get from  
01:46PM 20 somebody else, she never said Peter Gerace ever gave her  
01:46PM 21 Lortabs at all.

01:46PM 22 There was G.R. had spoken to them. There was other  
01:46PM 23 individuals who had spoken to the government. None of them  
01:46PM 24 advanced this investigation forward.

01:46PM 25 Katrina Nigro moves the investigation forward. She

01:46PM 1 makes all these allegations of upstairs there being high-end  
01:46PM 2 prostitution. She starts naming big names, celebrities,  
01:46PM 3 really, really exciting allegations. And she inflicts every  
01:46PM 4 part of this investigation going forward.

01:46PM 5 She starts helping the government find witnesses.

01:46PM 6 How could we rely on anybody that Katrina Nigro  
01:46PM 7 contacted first? Especially because we don't know what  
01:46PM 8 communication they had.

01:46PM 9 She says oh, I, gave -- I gave the government my  
01:47PM 10 password to my -- my social media. Come on. No, she didn't.  
01:47PM 11 Nobody remembers that. Nobody looked at her Facebook records.

01:47PM 12 And frankly I don't know which is worse, the idea  
01:47PM 13 that she was lying to you about something else to try to give  
01:47PM 14 herself some credibility, or the idea that she would have  
01:47PM 15 given the password and the government wouldn't check knowing  
01:47PM 16 that she was talking to people that she was saying were  
01:47PM 17 witnesses.

01:47PM 18 How many other people did she talk to? We don't  
01:47PM 19 know.

01:47PM 20 We know that there definitely are witnesses who  
01:47PM 21 testified at this trial that she did communicate with. You  
01:47PM 22 heard at least one example of K.M. getting involved when  
01:47PM 23 Katrina reaches out to her and says, do you want to get in on  
01:47PM 24 the lawsuit, a secret grand jury, Peter will definitely lose.

01:47PM 25 Come on. That's how somebody gets introduced to this

01:47PM 1 investigation? That's somebody who apparently had relevant  
01:47PM 2 information? It starts with Katrina Nigro saying, do you want  
01:47PM 3 to get into in on this lawsuit?

01:48PM 4 Katrina Nigro is giving interviews to the Buffalo  
01:48PM 5 News where she's acknowledging that she's part of this  
01:48PM 6 investigation, she's on social media talking about it?

01:48PM 7 She gives the government the testimony they're  
01:48PM 8 looking for. She talks about clogged buckets of needles that  
01:48PM 9 came out of the toilets, just completely nonsensical things.  
01:48PM 10 She talks about the upstairs room that she would unlock for  
01:48PM 11 Peter and his friends, even though during the course of this  
01:48PM 12 trial we learned that she didn't have a key.

01:48PM 13 She talks about giving envelopes to Mr. Bongiovanni,  
01:48PM 14 something that you didn't hear testimony from anybody else.

01:48PM 15 She gives them, the government, what they need to  
01:48PM 16 fill the gaps to pursue the charges that they've pursued here.  
01:48PM 17 And what comes out of that is what you have in front of you,  
01:48PM 18 what was referred to by Special Agent Burns as a historical  
01:48PM 19 conspiracy.

01:48PM 20 So what is a historical conspiracy? A historical  
01:49PM 21 conspiracy is cherry-picking witnesses instead of giving  
01:49PM 22 actual direct hard evidence. Just giving you testimony from  
01:49PM 23 people from various times who will say things that are  
01:49PM 24 completely inconsistent with each other, inconsistent with  
01:49PM 25 things that they've said in the past. As long as it's

01:49PM 1 prejudicial to Mr. Gerace, they'll put them up there.

01:49PM 2 There are other things that could've been done to  
01:49PM 3 give you evidence besides just historical testimony from  
01:49PM 4 questionable witnesses. You heard about different types of  
01:49PM 5 investigative techniques.

01:49PM 6 Now, the government is not legally obligated to  
01:49PM 7 pursue any of those investigative techniques, they don't have  
01:49PM 8 to, the judge will tell you that.

01:49PM 9 The judge, I believe, is going to tell you something  
01:49PM 10 about this particular area of discussion that came up  
01:49PM 11 yesterday, and it's going to indicate in deciding whether the  
01:50PM 12 government has met their burden of proof, you may consider  
01:50PM 13 testimony of witnesses and argument by counsel that the  
01:50PM 14 government did not use specific investigative techniques. The  
01:50PM 15 judge is going to tell you you can consider that.

01:50PM 16 And he's going to tell you, I expect, that you can do  
01:50PM 17 that because you should look at all the evidence in the case  
01:50PM 18 or lack of evidence in deciding whether Mr. Gerace is guilty  
01:50PM 19 or not guilty.

01:50PM 20 There's no legal requirement to use any specific  
01:50PM 21 investigative technique, but you are certainly able to  
01:50PM 22 consider that in conjunction with your review of the evidence  
01:50PM 23 and lack of evidence.

01:50PM 24 Undercover buys, we heard it two different times.  
01:50PM 25 And who knows if that's that all there is. That's the two

01:50PM 1 that we heard about. There was something in 2016, I think  
01:50PM 2 2018, and we heard testimony from K.A. that if you weren't  
01:50PM 3 presented testimony later on about the fact that there were  
01:50PM 4 these operations that didn't result in any other purchases,  
01:50PM 5 you would have been left with the impression by the government  
01:51PM 6 that, hey, look, when we try to go do an undercover buy at  
01:51PM 7 Pharaoh's, we get one -- we got one with K.A. And that is  
01:51PM 8 completely inconsistent with what was really going on back  
01:51PM 9 then.

01:51PM 10 K.A. did a purchase under the table so cameras  
01:51PM 11 couldn't see, and she told the individual here's my phone  
01:51PM 12 number, if you ever want to do a deal in the future, we've got  
01:51PM 13 to do it outside the club. She was worried about being fired  
01:51PM 14 if she got caught.

01:51PM 15 Now, did she get away with it? Sure. There's  
01:51PM 16 certain things that, if somebody's careful, they can probably  
01:51PM 17 get past the cameras, but it's not with the authorization of  
01:51PM 18 management. There was no okay to do that. She specifically  
01:51PM 19 said future transactions are outside the club. Did that stop  
01:51PM 20 them from going back to the club to try again? No, of course  
01:51PM 21 they went back to try again, never got another undercover  
01:51PM 22 purchase.

01:51PM 23 And then you heard about -- about Investigator Santos  
01:52PM 24 or New York State Police Santos, who made multiple attempts  
01:52PM 25 and said well, I don't think I'm a known commodity so -- and

01:52PM 1 that's why I can't do a purchase. What is that? That's just  
01:52PM 2 speculation.

01:52PM 3                   What mattered is he went in there in a place that was  
01:52PM 4 described way back in the opening as a place that's prevalent,  
01:52PM 5 that you can get drugs anywhere, anybody can go in and get  
01:52PM 6 drugs, it's available to anybody who walks in through the  
01:52PM 7 doors at Pharaoh's, and you heard testimony throughout the  
01:52PM 8 trial that attempted to advance that narrative. But what  
01:52PM 9 would actually happen when someone went in there and tried to  
01:52PM 10 buy drugs? Nothing.

01:52PM 11                   There was testimony that at some point they got a  
01:52PM 12 little bit of marijuana. That was it. That's not at all  
01:52PM 13 consistent with the narrative that was presented to you  
01:52PM 14 throughout this trial.

01:52PM 15                   Wiretaps. Trying to say that Judge Michalski has  
01:52PM 16 anything to do with wiretaps being used is just nonsense.  
01:53PM 17 We're talking about a 10-, 15-year period where Peter Gerace  
01:53PM 18 was supposedly being investigated at various times, and nobody  
01:53PM 19 tries to pursue a wiretap?

01:53PM 20                   Well, because Anthony Gerace was on a deconfliction  
01:53PM 21 notice that that somehow relates to why they wouldn't pursue  
01:53PM 22 one against Mr. Gerace?

01:53PM 23                   I mean, here's something that you know because of the  
01:53PM 24 evidence, Jeff Anzalone, one of the government's witnesses was  
01:53PM 25 on a wiretap, they got one with him. He was talking to K.L.

01:53PM 1 about drug transactions. He was doing it on a recorded  
01:53PM 2 wiretap recording. So we actually have more evidence of  
01:53PM 3 recording of drug transactions for two of the witnesses than  
01:53PM 4 we do against Mr. Gerace. He's on a wiretap of K.L. where  
01:53PM 5 she's talking about purchasing Adderall. There's no recording  
01:53PM 6 of Mr. Gerace.

01:53PM 7 And I want to make another point, the government did  
01:53PM 8 try to offer you testimony, well, here's why that wouldn't  
01:54PM 9 have been feasible. You may disagree with their argument of  
01:54PM 10 why it's not feasible, or you may agree with it. It doesn't  
01:54PM 11 matter. It doesn't change the burden of proof. It doesn't  
01:54PM 12 mean that suddenly they don't have to present you as much  
01:54PM 13 evidence.

01:54PM 14 Did they have to pursue a wiretap? No. They don't  
01:54PM 15 have to pursue any type of technique.

01:54PM 16 But to the extent that there's evidence missing that  
01:54PM 17 would have helped you decide this case, you're able to  
01:54PM 18 consider the lack of evidence, any lack of evidence, any gaps  
01:54PM 19 in the evidence, any shortcomings in the evidence. You  
01:54PM 20 consider that, it doesn't change because the government has  
01:54PM 21 repeatedly had witnesses testify well, Peter Gerace was  
01:54PM 22 friends with a lot of law -- a lot of law enforcement.

01:54PM 23 So what? It doesn't change the verdict. Not at all.

01:54PM 24 No search warrants at any time during this long  
01:54PM 25 period of time of 10 to 15 years in some instance, no search

01:54PM 1 warrants, the only search warrant -- they do two search  
01:55PM 2 warrants which is more than exists in a lot of cases, don't  
01:55PM 3 find anything, and the argument is, well, okay there's no  
01:55PM 4 evidence really recovered on those. But do the cameras record  
01:55PM 5 anything back in 2013? No, of course not. Cameras don't  
01:55PM 6 record seven years worth of recording.

01:55PM 7 But had they went in and did a search warrant at any  
01:55PM 8 time in that time span, you really believe beyond a reasonable  
01:55PM 9 doubt it would've showed something different than what there  
01:55PM 10 was in '09 and 2019? That is nothing but pure conjecture.

01:55PM 11 You have actual in evidence this case that gives rise  
01:55PM 12 to reasonable doubt. A search in '09, in the time span that  
01:55PM 13 we're talking about here, producing no evidence, that's  
01:55PM 14 reasonable doubt.

01:55PM 15 2019, government, during the course of this  
01:55PM 16 investigation, has not filed charges against Mr. Gerace yet.  
01:55PM 17 They go to a judge, say we think we have allegations  
01:55PM 18 supporting probable cause, they get authorization, go in and  
01:55PM 19 get just about nothing. That's reasonable doubt.

01:56PM 20 The fact that -- that they'll present arguments to  
01:56PM 21 you about well, Mr. Bongiovanni was charged at some point at  
01:56PM 22 the end of October has nothing to do with the recordings in  
01:56PM 23 the VIP area, they go back further than that. And there's  
01:56PM 24 nothing on any one of those cameras consistent with the  
01:56PM 25 testimony you've heard from some of the witnesses. No video,

01:56PM 1 no pictures, no recordings.

01:56PM 2 They have Mr. Gerace's phone in their possession, his  
01:56PM 3 entire life. And they don't have -- you saw what they think  
01:56PM 4 is the strongest evidence of any of the charges they have.  
01:56PM 5 They have conversations with Anthony Gerace, people that  
01:56PM 6 they've essentially alleged are coconspirators.

01:56PM 7 They had evidence -- they had text messages you heard  
01:56PM 8 about with all these other individuals that came up throughout  
01:56PM 9 the trial. You didn't see any of those text messages. What  
01:57PM 10 does that mean? Would any one of us openly provide our phone  
01:57PM 11 and let anybody else just read through the messages? It's  
01:57PM 12 extremely personal. It's extremely private. And they have  
01:57PM 13 access to all those conversations. And there's nothing about,  
01:57PM 14 to say, well, maybe he was trying to be careful, based on  
01:57PM 15 what?

01:57PM 16 Everything they've suggested to you is he's cocky  
01:57PM 17 because he has law enforcement friends, he didn't think there  
01:57PM 18 was anything to worry about. You're telling me he never  
01:57PM 19 during the course of that time made a single drug transaction  
01:57PM 20 even though he's supposedly this drug dealer that they've been  
01:57PM 21 talking about? Never talks about a single sex act on there.  
01:57PM 22 The people that he supposedly -- there was almost nobody that  
01:57PM 23 we heard testimony about that he communicated with negotiated  
01:57PM 24 for a commercial sex act. I think the only one -- the only  
01:57PM 25 one, other than the testimony of G.R. was, was Russell

01:57PM 1 Salvatore.

01:57PM 2 No messages with Russell Salvatore. Nothing of  
01:58PM 3 relevance presented to you with that at all. No pictures of  
01:58PM 4 Peter Gerace with Russell Salvatore. He was at his  
01:58PM 5 restaurant, Russell Salvatore's not in the picture. You're  
01:58PM 6 telling me that there's evidence to suggest that Russell  
01:58PM 7 Salvatore on a phone call that the witness didn't even pretend  
01:58PM 8 to be listening in on, she just said she hears -- she hears it  
01:58PM 9 because she's in the room, that's evidence of Peter  
01:58PM 10 negotiating drugs or negotiating commercial sex acts?  
01:58PM 11 Meanwhile on his phone, nothing? Nothing at all.

01:58PM 12 That gives us a reason to hesitate, doesn't it?

01:58PM 13 That's all it takes. To look at -- to think about this and  
01:58PM 14 think they have his entire life in digital format, and we saw  
01:58PM 15 the most there was. And they interpreted how they wanted to,  
01:58PM 16 they had a text message from the judge with no context to it  
01:58PM 17 of, let's go get some pussy there. And they're saying that  
01:58PM 18 they think that might have to do with a commercial sex act.  
01:59PM 19 Why? There's nothing to support that.

01:59PM 20 That's the government telling you how to think. And  
01:59PM 21 that's where you come in and you push back against that.

01:59PM 22 That's where you critically think about the evidence  
01:59PM 23 and say that doesn't mean that, there has to be more than  
01:59PM 24 that. A message like that does not tell me they're discussing  
01:59PM 25 a commercial sex act.

01:59PM 1           Those messages are all in evidence. If you sift  
01:59PM 2 through them, if you go through them all, you'll see the  
01:59PM 3 majority of them are about talking of times to meet up go grab  
01:59PM 4 a drink. A lot of scheduling issues. These two never can  
01:59PM 5 seem to find a time to actually meet up.

01:59PM 6           But they talk about getting together with their  
01:59PM 7 families, with Sue, Judge Michalski's wife. You read those  
01:59PM 8 conversations as a whole, they're not much different than any  
01:59PM 9 conversation other than one or two messages that were picked  
01:59PM 10 out that were maybe vulgar, they're not much different than  
01:59PM 11 any conversation you have in your phone, and that's the  
02:00PM 12 evidence they picked out of his phone. That's reasonable  
02:00PM 13 doubt.

02:00PM 14           What about the lack of witnesses? They put -- they  
02:00PM 15 put on a number of witnesses here, all sort of within a  
02:00PM 16 particular circle, all generally connected to each other in  
02:00PM 17 some way. Some may not be or may be off on a little bit of an  
02:00PM 18 island. We don't know which ones communicated with each  
02:00PM 19 other. We don't know which ones Katrina Nigro communicated  
02:00PM 20 with. They didn't specifically ask those questions for the  
02:00PM 21 most part, and we didn't always ask those questions on cross.

02:00PM 22           Who knows if they would've been telling the truth?  
02:00PM 23 They've lied about a ton of other things.

02:00PM 24           We've heard that there's all this investigative work  
02:00PM 25 with Katrina Nigro, the partner -- the self-described partner

02:00PM 1 to the government here, collecting these witnesses. At the  
02:00PM 2 end, what you've got were witnesses that were really cherry  
02:00PM 3 picked to advance a particular narrative.

02:00PM 4 Think about the pure volume of dancers over the  
02:01PM 5 timeframe that we're talking about. You heard testimony that  
02:01PM 6 there were sometimes 50 dancers working a night, in a single  
02:01PM 7 night. More dancers, five times as many dancers as you may  
02:01PM 8 have heard witnesses from here at this trial. In a night.  
02:01PM 9 And they brought in witnesses to cover a 10- to 15-year span  
02:01PM 10 of time.

02:01PM 11 And I asked some questions about that. You did  
02:01PM 12 interview other people, right? You interviewed other dancers,  
02:01PM 13 you interviewed other managers, you interviewed other people.  
02:01PM 14 And the answer's yes, and I didn't ask any specifics. And  
02:01PM 15 frankly the specifics of any conversations they have would be  
02:01PM 16 hearsay, it's not for your consideration what was specifically  
02:01PM 17 said during those interviews.

02:01PM 18 But what's significant and what is for your  
02:01PM 19 consideration and what is in evidence is the government, on  
02:01PM 20 redirect, asked Special Agent Burns, well, did you assess  
02:01PM 21 their credibility? Did you assess whether they're  
02:01PM 22 forthcoming?

02:02PM 23 Yeah, we determined that some of those -- those  
02:02PM 24 witnesses are not credible.

02:02PM 25 They're talking to federal agents. They obviously

02:02PM 1 have to tell the truth. We'll go through just a couple  
02:02PM 2 examples.

02:02PM 3 You'll hear what it is that they find not credible:  
02:02PM 4 Anything that doesn't fit the government's narrative.

02:02PM 5 So you've got the witnesses that fit the government's  
02:02PM 6 narrative, and there is a sea of witnesses out there that we  
02:02PM 7 never heard from. Witnesses that there's some evidence,  
02:02PM 8 regardless of whether they were telling the truth or not,  
02:02PM 9 certainly told the government that they've got it wrong.

02:02PM 10 I want to go through some of the points that I think  
02:02PM 11 are relevant to assessing credibility. And -- and some of  
02:02PM 12 these points are points that I think you're going to get  
02:02PM 13 instructions on that are very specific to things that you can  
02:02PM 14 consider as part of credibility.

02:02PM 15 What the government presented during their closing  
02:03PM 16 was not arguments for the most part on why you should find  
02:03PM 17 these witnesses credible. There was a few examples of, well,  
02:03PM 18 this was corroborated by this, or this was corroborated by  
02:03PM 19 that, and we'll talk about that momentarily. But they didn't  
02:03PM 20 get far into the credibility analysis, and I submit we all  
02:03PM 21 know that these witnesses were more than comfortable, the  
02:03PM 22 majority of them were more than comfortable getting up here  
02:03PM 23 and lying. You saw some of it in realtime.

02:03PM 24 I've never seen anything like it in my career as an  
02:03PM 25 attorney when K.L. lied to you folks about things that she

02:03PM 1 didn't think that we had any further follow-up questions on,  
02:03PM 2 and then once we got into some specifics, just changed her  
02:03PM 3 answer.

02:03PM 4 So a few moments ago, you said something different?  
02:03PM 5 You were -- that wasn't true? Correct.

02:03PM 6 No reaction at all.

02:03PM 7 I mean, you saw it happen with other witnesses. You  
02:03PM 8 saw it happen with Katrina Nigro quite a bit. When they're  
02:03PM 9 caught in something that they're lying about to you, you see  
02:03PM 10 some embarrassment, you see some trying to walk it back,  
02:04PM 11 trying to explain it, explain why they said something  
02:04PM 12 different at different times.

02:04PM 13 Oh, I was confused. Oh, that's not right. Yeah,  
02:04PM 14 okay, maybe I said that before, but today is what matters.

02:04PM 15 You heard all these different explanations, Ms. K.L.  
02:04PM 16 didn't even try. Yeah, I was lying to you. Stone cold.  
02:04PM 17 Under oath. Didn't matter to her at all.

02:04PM 18 She thought she -- when I asked her, are you on  
02:04PM 19 Adderall? You take Adderall not prescribed? She comfortably  
02:04PM 20 lies to you and says, no, I only take it as prescribed, I have  
02:04PM 21 a prescription.

02:04PM 22 I started asking about particular people. Oh, yeah.  
02:04PM 23 Okay. Yeah. I forgot that you have a recording of me buying  
02:04PM 24 illegal Adderall from somebody. I forgot the jury heard about  
02:04PM 25 that. I forgot I was never charged with it, so I forgot that

02:04PM 1 that recording exists.

02:04PM 2 So, yeah. Yeah. I was just lying to you guys a  
02:04PM 3 little while ago. Big deal. Just totally indifferent to it.

02:04PM 4 Here's some things that I think you'll hear about  
02:05PM 5 when assessing credibility. The judge is going to give you  
02:05PM 6 examples of common-sense questions that you should -- you can  
02:05PM 7 ask, that you should ask when you critically think about a  
02:05PM 8 witness's credibility.

02:05PM 9 Was the -- was the witness candid, frank, forthright?

02:05PM 10 Did the witness seem as if he or she was hiding  
02:05PM 11 something or being evasive?

02:05PM 12 How did the witness testify on direct exam compared  
02:05PM 13 with the way the witness testified on cross exam? That's a  
02:05PM 14 big one. And the government pointed that out in the closing  
02:05PM 15 that they gave.

02:05PM 16 One of their own witnesses, Doug Augustyniak, they  
02:05PM 17 said, well, they were -- they weren't nearly as antagonistic  
02:05PM 18 during cross-examination. They suggested you shouldn't  
02:05PM 19 believe our own witness because there's a difference with how  
02:05PM 20 he acted on cross-examination and direct examination, except  
02:05PM 21 for the part that we want you to believe. Just disregard the  
02:05PM 22 rest.

02:05PM 23 Very much an example of the government telling you  
02:05PM 24 how to think. We're gonna put a witness on the stand and  
02:05PM 25 testify under oath. We are going to call that witness to the

02:06PM 1 stand, and then we're going to tell you which parts to accept  
02:06PM 2 of their testimony, just disregard the rest. They're not  
02:06PM 3 credible.

02:06PM 4 Meanwhile, think about the rest of some of the  
02:06PM 5 government witnesses, how they shifted from direct examination  
02:06PM 6 to cross-examination.

02:06PM 7 Think about A.A. up there, acting like she was going  
02:06PM 8 to start crying with every single question that was asked on  
02:06PM 9 direct examination, and then just totally flipping a switch as  
02:06PM 10 soon as the cross-examination started.

02:06PM 11 There is something to that in terms of the witness's  
02:06PM 12 credibility, something that you are allowed to assess,  
02:06PM 13 something that the judge will tell you that you're allowed to  
02:06PM 14 consider as part of critically thinking about the witness  
02:06PM 15 testimony.

02:06PM 16 Was the witness consistent in his or her testimony,  
02:06PM 17 or did he or she contradict himself? I gave you an example of  
02:06PM 18 it happening within seconds. There were a lot of times  
02:06PM 19 throughout this trial where witnesses said one thing during  
02:06PM 20 direct, and then contradicted themselves during cross, or  
02:07PM 21 during cross, contradicted themselves when they were trying to  
02:07PM 22 push back against an answer but realized, okay, maybe I said  
02:07PM 23 that in the past. I forgot, so I'll acknowledge it, yes.

02:07PM 24 The government pointed out some of their own  
02:07PM 25 witnesses' contradictions on their own direct examinations.

02:07PM 1 Remember Lou Selva? Lou Selva got up here and gave what  
02:07PM 2 appeared to be a credible answer about whether he ever heard  
02:07PM 3 Bongiovanni use a racial slur. And then the government said  
02:07PM 4 well, we asked you about this specifically just about a year  
02:07PM 5 ago, and you told us you did, and he starts changing his  
02:07PM 6 answer. The witness who has things to gain for testifying the  
02:07PM 7 way the government wants. Oh, yes, yes, I remember it.

02:07PM 8                 And you saw Mr. Tripi react to that. You saw him  
02:07PM 9 raise his voice at the witness. You saw him say, are you  
02:07PM 10 playing games?

02:07PM 11                 And with all due respect to Mr. Tripi and Mr. Cooper,  
02:07PM 12 if they're willing to yell at the witnesses here in front of  
02:08PM 13 all you folks, in front of the judge, in front of defense  
02:08PM 14 counsel, and in front of anybody who's sitting in the  
02:08PM 15 audience, you can only imagine what happens behind closed  
02:08PM 16 doors.

02:08PM 17                 The judge will instruct you on other points related  
02:08PM 18 to credibility. Whether you choose to believe a witness or  
02:08PM 19 how much you choose to believe can also be influenced by bias.  
02:08PM 20 If there's any evidence that a witness is prejudiced or  
02:08PM 21 hostile towards Mr. Gerace, the judge will instruct you that  
02:08PM 22 you are required to view the witness's testimony with caution,  
02:08PM 23 to weigh it with care. Subject -- subject it to close and  
02:08PM 24 careful scrutiny.

02:08PM 25                 We saw that with plenty of witnesses. The government

02:08PM 1 tried to pass off, well, they have good reason to be  
02:08PM 2 prejudiced against Mr. Gerace.

02:08PM 3 C.B. had good reason to be prejudiced against Mr.  
02:08PM 4 Gerace. She's sending them messages, can't wait to put this  
02:09PM 5 guy in jail. That's the type of thing you're supposed to  
02:09PM 6 consider.

02:09PM 7 That's something that's supposed to give you caution  
02:09PM 8 when you find out that she's sending messages like that to the  
02:09PM 9 government. Shouldn't be talking about that on direct, but it  
02:09PM 10 comes out that there's more going on behind the scenes there  
02:09PM 11 than we know about.

02:09PM 12 She's a witness who tells you she saw a sex act once  
02:09PM 13 in the VIP Room, and felt like there wasn't really any  
02:09PM 14 follow-up on it, and generally tries to give testimony kind of  
02:09PM 15 consistent with the government's narrative wherever she could.

02:09PM 16 And what's interesting about her -- well, there's a  
02:09PM 17 couple thing that's interesting about her -- but one thing  
02:09PM 18 that's interesting is none of that offended her enough to  
02:09PM 19 leave. She didn't say she was on drugs -- on drugs, addicted,  
02:09PM 20 had to stay at the job. She kept working there. None of it  
02:09PM 21 bothered her enough that she left employment at Pharaoh's  
02:09PM 22 until her boyfriend was fired. Then she told management I  
02:09PM 23 don't play these games.

02:09PM 24 We don't know what the circumstances are around that,  
02:09PM 25 but we know that's when she quits. Nothing in her tenure at

02:10PM 1 Pharaoh's was offensive to her enough to quit until they fired  
02:10PM 2 her boyfriend, and then she's just somebody who just doesn't  
02:10PM 3 play games.

02:10PM 4 And she comes back and goes there as a patron later  
02:10PM 5 on. Which is something you hear about a lot of these  
02:10PM 6 witnesses who talk about these horrific experiences, and then  
02:10PM 7 they go back.

02:10PM 8 E.H. was another one who was posting on social media  
02:10PM 9 about how she's going to send Mr. Gerace to jail, something to  
02:10PM 10 that effect, on the morning of her testimony. Another person  
02:10PM 11 who has a clear bias. It didn't come out exactly what her  
02:10PM 12 bias is, but we know she has it. And you can consider that,  
02:10PM 13 and you have -- that has to give you caution when you hear  
02:10PM 14 testimony like that.

02:10PM 15 She was straight-up bizarre throughout most of her  
02:10PM 16 testimony. The one thing that's particularly bizarre is when  
02:10PM 17 confronted on cross-examination about her bias, when it was  
02:10PM 18 brought up that she had been posting on social media about how  
02:11PM 19 she's going to send him to jail, she got so combative she  
02:11PM 20 started yelling about how she was raped.

02:11PM 21 And then it was clarified because I think all of us  
02:11PM 22 were confused what she was referring to, and, oh, it's the  
02:11PM 23 thing I talk about on direct examination, that there's the  
02:11PM 24 allegation that somebody at some point ejaculated on me.  
02:11PM 25 Something that I don't think the evidence to support it is

02:11PM 1 really believable at all when you consider the totality of her  
02:11PM 2 testimony. But she's describing it as such a horrific  
02:11PM 3 experience that Pharaoh's is certainly a place she would never  
02:11PM 4 go back to, right?

02:11PM 5 She went back a few years later, and said she had one  
02:11PM 6 of the best times of her life. Remember that weird testimony  
02:11PM 7 where you asked about you got kicked out that night because  
02:11PM 8 you were acting out of control? Well, yeah, I got kicked out.

02:11PM 9 And you had a bad time, you were pissed, right? Oh,  
02:11PM 10 no, no, I actually had the best time of my life that night.

02:11PM 11 What? That's one of their witnesses. That's one of  
02:11PM 12 the people that they referred to in their closing statement,  
02:12PM 13 somebody that they said you should rely on.

02:12PM 14 The judge, I believe, will instruct you that  
02:12PM 15 testimony from witnesses who were using or addicted to drugs  
02:12PM 16 when the events that he or she observed took place must be  
02:12PM 17 examined with greater scrutiny than the testimony of other  
02:12PM 18 witnesses.

02:12PM 19 The government is completely right during their  
02:12PM 20 closing, nobody's saying that because someone is addicted to  
02:12PM 21 drugs, they can't -- that they can't be a victim of the crime  
02:12PM 22 under certain circumstances. That's not what we have in this  
02:12PM 23 trial. That's not what the -- what -- what the reality is.

02:12PM 24 But of course, of course somebody, just because  
02:12PM 25 they're on drugs, can still be a victim of a crime. That's

02:12PM 1 not the issue.

02:12PM 2 The judge is not going to instruct you on anything  
02:12PM 3 like that, and we're not going to argue that.

02:12PM 4 But I will argue consistent with what you'll be  
02:12PM 5 instructed on is when somebody is heavily using drugs to the  
02:12PM 6 extent that they say what most of these witnesses say they  
02:13PM 7 were, where they had no awareness of what was going on half of  
02:13PM 8 time, and then they come up and testify about specific  
02:13PM 9 details. Especially when the details have changed over time  
02:13PM 10 depending on when they meet with the government.

02:13PM 11 That's something you can consider. That's not off  
02:13PM 12 limits. That's totally appropriate. And I believe you will  
02:13PM 13 be instructed accordingly.

02:13PM 14 Witnesses who pleaded guilty after entering into an  
02:13PM 15 agreement with the government to testify, you should bear in  
02:13PM 16 mind a witness has entered into such an agreement has an  
02:13PM 17 interest in this case different from other witnesses.

02:13PM 18 A witness who believes he or she may be able to  
02:13PM 19 obtain his or her freedom, or receive a lighter sentence by  
02:13PM 20 giving testimony favorable to the prosecution, has a motive to  
02:13PM 21 testify falsely. That's common sense. It's so obvious. It's  
02:13PM 22 so ingrained into the law that somebody who strikes a deal and  
02:13PM 23 says I'm going to get a lighter sentence if I say this or  
02:14PM 24 that, that it's instructed as one of the things you can  
02:14PM 25 consider, that you should consider.

02:14PM 1 I mean, some of the nonsense that came from these  
02:14PM 2 witnesses who are under agreements. The jailhouse informants?  
02:14PM 3 Did any of you folks actually think either of them came across  
02:14PM 4 as credible?

02:14PM 5 They write letters. A case that's in the news,  
02:14PM 6 that's highly publicized, they both acknowledge, okay, yeah,  
02:14PM 7 people in the jail were talking about Mr. Gerace and the case,  
02:14PM 8 we watch the news every night, we check the paper, we check,  
02:14PM 9 we are news junkies.

02:14PM 10 And why do you think they're news junkies? Because  
02:14PM 11 opportunities like this present themselves.

02:14PM 12 I mean, the statements that were made were just so  
02:14PM 13 perfectly tailored to what the government wanted or needed  
02:14PM 14 from them.

02:14PM 15 And all the while, in order to believe the premise  
02:14PM 16 that these statements were made, you have to believe  
02:15PM 17 Mr. Gerace is just openly talking about criminal conduct.

02:15PM 18 And remember, you've got the cell phones. They want  
02:15PM 19 you to believe that, what, there's no messages because he's so  
02:15PM 20 careful? And then separately tell you this is somebody who  
02:15PM 21 gets into a van in front of correctional officers, or at the  
02:15PM 22 jail in front of other inmates and correctional officers, and  
02:15PM 23 just starts announcing guilt in a way that's perfectly  
02:15PM 24 tailored to what the government would want? Give me a break.

02:15PM 25 That's the type of people they put on the stand to

02:15PM 1 testify to you. That's the type of people they want you to  
02:15PM 2 rely on. And that is reasonable doubt.

02:15PM 3 That's a reason to hesitate. If Ben Rivera or  
02:15PM 4 Hughes -- Kevin Hughes said lend me \$500 and I'll give you 500  
02:15PM 5 back next week, I imagine most of you are not taking that  
02:15PM 6 deal. Most of you are not going to find that that person's  
02:16PM 7 credible or reliable enough to do it.

02:16PM 8 And if any of you are, I imagine at a minimum you  
02:16PM 9 would hesitate. And if any of you are so generous and  
02:16PM 10 trusting that you wouldn't hesitate, I would hope that you  
02:16PM 11 would find it reasonable if one of your fellow jurors did.

02:16PM 12 Now, we're talking about witnesses, so let's talk  
02:16PM 13 about -- we've touched upon it a little bit, but let's talk  
02:16PM 14 about really what precedes their testimony.

02:16PM 15 The witnesses that matter the most to the government,  
02:16PM 16 you heard about excessive preparation.

02:16PM 17 We're not talking about meeting with them once to  
02:16PM 18 kind of go through, here's the questions we're going to ask,  
02:16PM 19 and, okay, now we know your answers. We're talking about  
02:16PM 20 meeting with them again and again and again and again.  
02:16PM 21 Communication consistently between agents and these witnesses,  
02:17PM 22 testimony from grand jury proceedings.

02:17PM 23 And what matters about that? A few things. One,  
02:17PM 24 you've heard throughout this trial that these witnesses were  
02:17PM 25 generally aware that if they lie to a federal agent, they

02:17PM 1 could be charged. You heard about all these witnesses who  
02:17PM 2 have changed their stories at various times lying to federal  
02:17PM 3 agents, none of them are charged.

02:17PM 4 Some of them were put into the grand jury because  
02:17PM 5 they were brought in at some point before charges were filed,  
02:17PM 6 and you heard about that. And when these witnesses testified,  
02:17PM 7 answers that were completely different in the way you  
02:17PM 8 testified today. It wasn't always from the defense.  
02:17PM 9 Sometimes the government liked an answer they gave earlier  
02:17PM 10 better, they impeached their own witnesses. Well, you said  
02:17PM 11 this on a different date. Because they actually liked the  
02:17PM 12 earlier inconsistencies, so they went with that one instead.  
02:17PM 13 These witnesses were prepped through and through, and  
02:17PM 14 the government is supposed to -- well, I'm not going to say  
02:18PM 15 what the government's supposed to do, but you would hope that  
02:18PM 16 if somebody is lying to you, you would disregard them. You  
02:18PM 17 would say this is somebody we can't rely on. This is not  
02:18PM 18 somebody we are going to put in front of a jury and let them  
02:18PM 19 give information that that jury could potentially rely on to  
02:18PM 20 decide the fate of somebody.  
02:18PM 21 With Lou Selva, there was some cross-examination and  
02:18PM 22 redirect examination about the yelling. And it was asked on  
02:18PM 23 redirect, well, sort of suggested we only yell at you when we  
02:18PM 24 think you're lying about something.  
02:18PM 25 Think about what that leads to. Think about how that

02:18PM 1 develops the testimony. You saw it happen on direct  
02:18PM 2 examination. If a witness didn't say something they were  
02:18PM 3 supposed to, you saw it on redirect quite a bit.

02:18PM 4 Some of the only times you saw an emotional reaction  
02:19PM 5 out of a witness was when they're being yelled at by the  
02:19PM 6 prosecutor in front of all you folks in an open courtroom, you  
02:19PM 7 see an emotional reaction to that. It's nothing sincere about  
02:19PM 8 that other than somebody isn't comfortable with being yelled  
02:19PM 9 at. And that is in open court, not something that's happening  
02:19PM 10 in the privacy of the U.S. Attorney's Office.

02:19PM 11 And probably one of the most significant things that  
02:19PM 12 I think should be considered in terms of the direct  
02:19PM 13 examination is you folks are the factfinders, you have to  
02:19PM 14 critically evaluate the evidence, you have to do your best to  
02:19PM 15 find the truth. And ultimately what you're making a  
02:19PM 16 determination on is: Is there a reasonable doubt? Did the  
02:19PM 17 government make -- did they reach their burden? Not what do  
02:19PM 18 we think is more likely, not what do we think is possibly or  
02:19PM 19 probably the case. You're trying to decide is there a reason  
02:19PM 20 to hesitate here. Is there a reason, a -- a reason, would a  
02:20PM 21 reasonable person doubt this evidence, a doubt that the  
02:20PM 22 evidence supports one of the elements of the charge?

02:20PM 23 And on direct examination, far too often in this  
02:20PM 24 case, you heard a narrative presented by a witness, that you  
02:20PM 25 folks had no way of knowing was false, or knowing was just

02:20PM 1 part of the picture.

02:20PM 2 Those witness would get up say we're going to tell  
02:20PM 3 the truth, the whole truth, and nothing but the truth. And  
02:20PM 4 then it's during cross-examination that you find out, oh,  
02:20PM 5 there's a whole lot more to this than what the government gave  
02:20PM 6 us.

02:20PM 7 I'll give you two examples. K.L. There's no  
02:20PM 8 question, when you listen to the direct examination without  
02:20PM 9 more, that it would have made sense to feel some sort of  
02:20PM 10 emotional reaction and feel bad for her. Feel like this is,  
02:20PM 11 in fact, a victim that they're showing us. Because what they  
02:21PM 12 gave you was a story line where she goes up there and  
02:21PM 13 Mr. Gerace just pulls his pants off and uses drugs to coerce  
02:21PM 14 her into sex, and that's what they give you.

02:21PM 15 And that happens 10 or 15 more times. That's what  
02:21PM 16 you're left with. That's what they present you as the whole  
02:21PM 17 truth, all the truth.

02:21PM 18 And what comes out during the cross-examination?

02:21PM 19 Nothing about that made sense. She was actually in a  
02:21PM 20 relationship with him. All the way from before Easter, all  
02:21PM 21 the way up until the end of her tenure at Pharaoh's.

02:21PM 22 She described it as a romantic relationship. She  
02:21PM 23 said the first night I was there, we were flirting, we went  
02:21PM 24 out to dinner, we did things that couples do.

02:21PM 25 Now, I'm not saying that it's not possible for some

02:21PM 1 of the other things alleged to have happened and also have  
02:21PM 2 been in a relationship, but it doesn't make sense here.  
02:21PM 3 There's definitely reasonable doubt. There's definitely  
02:21PM 4 reason to believe that if she gives you one version and leaves  
02:21PM 5 all that out and doesn't give you the context, there's a  
02:22PM 6 reason why they held it back. Because they didn't want you to  
02:22PM 7 know the context. Because when you know the context, you know  
02:22PM 8 nothing she's saying really does make sense here.

02:22PM 9 You found out when she was pulled over back in '09 in  
02:22PM 10 August, it's already at the end of the relationship. She's  
02:22PM 11 making allegations against Mr. Gerace, she's not trying to  
02:22PM 12 protect him. Never says anything about Lortabs. Never says  
02:22PM 13 anything about being coerced by him ever. None of that.

02:22PM 14 What she talks about is cocaine. She makes an  
02:22PM 15 allegation of cocaine, it's not corroborated by the search  
02:22PM 16 later on, but that's what she presents up. That's the  
02:22PM 17 allegation she was able to make at that time.

02:22PM 18 Special Agent Tom Callahan, who you did not hear  
02:22PM 19 about, met with her back then in '09 when they were in  
02:22PM 20 trouble, and that's what she offers up. She also offers up  
02:22PM 21 other information about other drug dealers that she can get  
02:22PM 22 drugs from, talking about how that night they were getting  
02:22PM 23 drugs from different locations, talking about other people at  
02:22PM 24 the club that she could potentially get drugs from. She  
02:22PM 25 specifically named one person at the club that you can get

02:22PM 1 Ecstasy and Lortabs from. Didn't say that she ever did or  
02:23PM 2 ever used Lortabs, but said there was a source for Lortabs in  
02:23PM 3 the club, and never mentions Mr. Gerace.

02:23PM 4 And when she gets in trouble again in 2012, again in  
02:23PM 5 a jail cell, Tom Callahan shows up to go talk to her. And  
02:23PM 6 still, nothing about Lortabs, nothing about anything coercive.

02:23PM 7 She's making allegations close to the time with no  
02:23PM 8 reason to protect Mr. Gerace, and it's nothing like the  
02:23PM 9 testimony that you heard on direct. Nothing at all.

02:23PM 10 When does she first come up with that? Last year.  
02:23PM 11 After she'd already testified at the grand jury, after she had  
02:23PM 12 met with agents and talked to them for years.

02:23PM 13 You got a brand new story that was just concocted  
02:23PM 14 last year, and it was the story that triggered all the  
02:23PM 15 payments that she started receiving, all the expenses: Hotel  
02:23PM 16 rooms, security deposits. They can frame that however they  
02:23PM 17 want.

02:23PM 18 Oh, she was scared. Suddenly, in 2013, she was  
02:24PM 19 scared and needed financial assistance. The timing of it is  
02:24PM 20 very problematic. It gives you reason to be suspicious. It  
02:24PM 21 gives you reason to hesitate as to her credibility.

02:24PM 22 Friday, they -- they start on direct, you don't want  
02:24PM 23 to be here, and she says no. Okay. Well, it's easy to say  
02:24PM 24 that and then get yourself another weekend of hotel rooms.

02:24PM 25 "They didn't ask" comment is a theme throughout this

02:24PM 1 trial. Katrina Nigro withheld some very specific information  
02:24PM 2 on her direct examination that takes apart everything she  
02:24PM 3 testified to. It was right in the beginning and almost  
02:24PM 4 unexpected. I came back to it at the very end.

02:24PM 5 What did she tell you about her being in the club?

02:24PM 6 She said confidently, didn't even try to walk it back, never  
02:24PM 7 realized what she had said. She told you confidently 2014.

02:25PM 8 2014, late 2014, I wasn't allowed in the club anymore. I

02:25PM 9 could only go in in the morning. Peter Gerace wouldn't let me  
02:25PM 10 in the club.

02:25PM 11 I think she thought she was insinuating something

02:25PM 12 negative about Mr. Gerace, he wouldn't let her in the club, he  
02:25PM 13 didn't want her to see what was going on.

02:25PM 14 Except the problem is that she's testified to you

02:25PM 15 about all these things that were going on in that timeframe  
02:25PM 16 that she now revealed to you that she wasn't there.

02:25PM 17 On that summary chart, they have Katrina Nigro listed  
02:25PM 18 at the top as evidence of the overdose in 2015. She said  
02:25PM 19 there was two. It was one piece of evidence that she had  
02:25PM 20 changed multiple times.

02:25PM 21 15 overdoses that she personally observed at some

02:25PM 22 point, then eight, then two, then two, then eight, then two.

02:25PM 23 Well, guess when they were? At a time where she just casually  
02:25PM 24 admits she's not in the club anymore. Peter Gerace wouldn't  
02:25PM 25 let her be there.

02:25PM 1           What did I ask at the very end? Did you ever tell  
02:26PM 2 the government that? Oh, they didn't ask. Think about how  
02:26PM 3 problematic that is.

02:26PM 4           Tell me that doesn't give you reasonable doubt.

02:26PM 5 Their star witness reveals that her testimony, some of the  
02:26PM 6 most significant parts of her testimony are impossible. And  
02:26PM 7 she says, well, the government didn't ask me about it.

02:26PM 8           What else did she say? What about the keys?

02:26PM 9 Remember the direct? I unlocked the door dozens of times. I  
02:26PM 10 unlocked the door for celebrities, for Sabres, for  
02:26PM 11 politicians, Peter Gerace would have me unlock the door.

02:26PM 12 Something that doesn't make really sense on its face, but  
02:26PM 13 that's what she said. She told you that she is -- she would  
02:26PM 14 bring dancers to the upstairs, and she would unlock the door.

02:26PM 15           On cross, when asked about it, she said oh, I got --  
02:26PM 16 I didn't have a key.

02:26PM 17           Is there another key you had access to? No, I got  
02:26PM 18 the key out of Chris Chudy's pocket one time, that was it.

02:26PM 19           Did you tell the government about that? They didn't  
02:27PM 20 ask.

02:27PM 21           Now, payments to witnesses is something that should  
02:27PM 22 give you real pause. Payments for security deposits, payments  
02:27PM 23 for hotel rooms, payments for rent, payments for insurance on  
02:27PM 24 the car. Special Agent Brian Burns made a comment about it  
02:27PM 25 was evaluated as being worthwhile to secure their testimony.

02:27PM 1 To secure their testimony, that was language used.

02:27PM 2 It absolutely did secure their testimony. These were  
02:27PM 3 witnesses that were bought and paid for. And you can and  
02:27PM 4 should consider that in assessing the credibility of these  
02:27PM 5 witnesses.

02:27PM 6 I submit you should consider any witness that had  
02:28PM 7 criminal charges pending, even if the government told them  
02:28PM 8 we're not going to -- to help you on your case.

02:28PM 9 People -- K.L. -- K.L. has charges she picked up  
02:28PM 10 literally the day that she was supposed to testify in addition  
02:28PM 11 to about three other sets of charges. She says, I'm on my own  
02:28PM 12 for that.

02:28PM 13 Okay. You don't think that she thinks there's some  
02:28PM 14 sort of benefit that she could potentially get here? Having  
02:28PM 15 the government on your side?

02:28PM 16 Katrina Nigro, when she first reports this, doesn't  
02:28PM 17 tell them about the pending DWIs, but it comes out. And she  
02:28PM 18 says, well, I was always on my own. I never involved the  
02:28PM 19 government in that. And the government may have never  
02:28PM 20 intervened other than, like, a call to verify at some point  
02:28PM 21 that she didn't have a particular device on her.

02:28PM 22 She acknowledged that in the text messages, she's  
02:28PM 23 messaging Brian Burns telling him I just had my PSI and I'm  
02:28PM 24 expecting to just get 10 days and some community service.  
02:29PM 25 Does that mean the government provided a benefit? Maybe not.

02:29PM 1 But she's definitely trying to include them on how a vehicular  
02:29PM 2 assault, which was about her 7th DWI, is resulting in ten days  
02:29PM 3 in jail.

02:29PM 4 She reveals why they didn't -- they didn't know about  
02:29PM 5 some of my other charges in other states, so I was basically  
02:29PM 6 pulling one over on the Court.

02:29PM 7 P.H. not only had payments for rent, the payments  
02:29PM 8 were given to her directly, and then she used the funds to buy  
02:29PM 9 drugs. And then when they went to confront her on it, she  
02:29PM 10 lied about it. She said, my husband blew it in gambling.

02:29PM 11 Those charges were still pending when she got up on  
02:29PM 12 the stand. She knows those charges are pending. They're  
02:29PM 13 prosecuted by this U.S. Attorney's Office. You don't think  
02:29PM 14 that she's trying to make them happy with whatever she says on  
02:29PM 15 the stand when they're still prosecuting her for misusing the  
02:29PM 16 funds they gave her in relation to this case?

02:30PM 17 The benefits that L.L. received, paying for car  
02:30PM 18 insurance, things that most of us have to take care of  
02:30PM 19 ourselves, and all she had to do was give testimony that made  
02:30PM 20 the government happy. And that testimony changed  
02:30PM 21 significantly over time.

02:30PM 22 You heard testimony that she said originally, I  
02:30PM 23 estimated 25 acts in the VIP Room. And then within a couple  
02:30PM 24 weeks before trial she said oh, I miscalculated, it was  
02:30PM 25 probably more like 500. What?

02:30PM 1           We're not talking about a difference between 25 and  
02:30PM 2 35, or 25 and 50, or 25 and 75. We just came into a different  
02:30PM 3 universe of estimates.

02:31PM 4           She was lying at some point. She's lying on the  
02:31PM 5 stand, is the most likely the case, or she's lying before.  
02:31PM 6 And if she's lied even once, and you're in a position where  
02:31PM 7 you'd have to testify, you would have hesitate to rely on any  
02:31PM 8 of her testimony. She is not a reliable witness. She's not  
02:31PM 9 somebody you can count on as part of rendering a verdict here.

02:31PM 10          **MR. FOTI:** Okay. Just give me a moment.

02:31PM 11          Judge, can we take a short break?

02:31PM 12          **THE COURT:** Sure, absolutely.

02:31PM 13          So, folks, let's take a ten-minute break. Remember  
02:32PM 14 my instructions about not talking about the case with anyone  
02:32PM 15 including each other, not making up your mind.

02:32PM 16          See you back here in about ten minutes.

02:32PM 17          (Jury excused at 2:32 p.m.)

02:32PM 18          **THE COURT:** Anything for the record from the  
02:32PM 19 government?

02:32PM 20          **MR. COOPER:** No, thank you.

02:32PM 21          **THE COURT:** From the defense?

02:32PM 22          **MR. FOTI:** No, thank you, Judge.

02:32PM 23          **THE COURT:** Okay. Are you still on target, Mr. Foti,  
02:32PM 24 for --

02:32PM 25          **MR. FOTI:** I believe so. I believe there's probably

02:33PM 1 about an hour left, maybe a little less.

02:33PM 2 **THE COURT:** Okay. Great. Thanks, everybody.

02:33PM 3 **THE CLERK:** All rise.

02:33PM 4 (Off the record at 2:33 p.m.)

02:42PM 5 (Back on the record at 2:42 p.m.)

02:42PM 6 (Jury not present.)

02:42PM 7 **THE CLERK:** All rise.

02:42PM 8 **THE COURT:** Please be seated.

02:43PM 9 **THE CLERK:** We are back on the record for the

02:43PM 10 continuation of the jury trial in case numbers 19-cr-227 and

02:43PM 11 23-cr-37, United States of America versus Peter Gerace Jr.

02:43PM 12 All counsel and parties are present.

02:43PM 13 **THE COURT:** Okay. Are we ready to continue,

02:43PM 14 Mr. Foti?

02:43PM 15 **MR. FOTI:** Yes, Judge, thank you.

02:43PM 16 **THE COURT:** Government -- government ready?

02:43PM 17 **MR. COOPER:** Yes, Judge, thank you.

02:43PM 18 **THE COURT:** Okay. Let's bring them back, please,

02:43PM 19 Pat.

02:43PM 20 **MR. SOEHNLEIN:** Your Honor, do you -- do you have the

02:43PM 21 exact amount of time that we have left up there?

02:43PM 22 **THE COURT:** I've got two hours and 21 minutes left.

02:44PM 23 **MR. SOEHNLEIN:** Thank you, Judge.

02:44PM 24 **MR. FOTI:** I promise not to go over that.

02:44PM 25 **MR. SOEHNLEIN:** I'm gonna help him even though he

02:45PM 1 called me a nerd.

02:45PM 2 (Jury seated at 2:45 p.m.)

02:45PM 3 **THE COURT:** The record will reflect that all our  
02:45PM 4 jurors, again, are present.

02:45PM 5 Mr. Foti, you may continue.

02:45PM 6 **MR. FOTI:** Thank you, Judge.

02:45PM 7 Okay. So, I want to start talking about the charges.

02:45PM 8 During Mr. Tripi's opening statement and then on the  
02:46PM 9 closing arguments by Mr. Cooper, to help kind of work through  
02:46PM 10 them, they've kind of broken it into four different  
02:46PM 11 categories of charges, and when the judge instructs you he's  
02:46PM 12 not going to place it into four different categories, and he's  
02:46PM 13 not going to necessarily frame it that way.

02:46PM 14 For purposes of discussion, I think that that works.  
02:46PM 15 So we're going to do that. We're going to talk about it in  
02:46PM 16 sort of the same general categories that the government  
02:46PM 17 discussed it as a means of kind of working through them.

02:46PM 18 I'm not -- I don't intend to go in the same order  
02:46PM 19 that the government did, I'm going to go in the order of the  
02:46PM 20 actual -- or, I might jump around a bit, but I'm going to  
02:46PM 21 start at the beginning of the indictment, so I'm going to  
02:46PM 22 start with the Bongiovanni-related charges, okay?

02:46PM 23 There were a couple of points made during the closing  
02:46PM 24 about things that Mr. Bongiovanni did, and while if he did  
02:47PM 25 that, that would be a violation of DEA policy, and if he did

02:47PM 1 that, that would potentially be a crime.

02:47PM 2 And as the very outset of this I want to say

02:47PM 3 Mr. Bongiovanni's not on trial here. If he did something that  
02:47PM 4 was a violation of DEA policy, that doesn't mean you convict  
02:47PM 5 Peter Gerace.

02:47PM 6 If he did something that constituted a crime

02:47PM 7 unrelated to Peter Gerace, that doesn't mean you convict Peter  
02:47PM 8 Gerace.

02:47PM 9 If he did something that theoretically was a crime  
02:47PM 10 that related to Peter Gerace, you still don't convict Peter  
02:47PM 11 Gerace, unless you believe the evidence established that Peter  
02:47PM 12 was in an agreement with Bongiovanni for it. That it wasn't  
02:47PM 13 just a friend who did something looking out for somebody, it  
02:47PM 14 was actually part of an agreement to act unlawfully.

02:47PM 15 So all of that matters because the closing arguments  
02:47PM 16 about Mr. Bongiovanni were closing arguments that were really  
02:47PM 17 about how Mr. Bongiovanni's guilty of this or that with no  
02:48PM 18 real evidence that Peter Gerace was trying to procure any type  
02:48PM 19 of benefit other than the allegations that Katrina Nigro made  
02:48PM 20 of these envelopes, which it's just not credible at all.

02:48PM 21 So we'll come back to that in a little bit. But I  
02:48PM 22 want to start there and then we'll talk through each of these,  
02:48PM 23 these events.

02:48PM 24 What I'm saying is by no way some sort of position or  
02:48PM 25 belief that I think Mr. Bongiovanni's guilty of something. If

02:48PM 1 he ever has been found guilty of anything, or he's ever been  
02:48PM 2 found to have violated DEA policy, that's not part of this  
02:48PM 3 trial.

02:48PM 4 What's part of this trial is whether there was an  
02:48PM 5 unlawful agreement between Mr. Gerace and Mr. Bongiovanni that  
02:48PM 6 constituted a conspiracy, and whether the proof supports that  
02:48PM 7 beyond a reasonable doubt as to each element, and whether  
02:48PM 8 there was the payment of a bribe and whether the proof  
02:48PM 9 supports that beyond a reasonable doubt as to each element.

02:48PM 10 Now, the government presented evidence that  
02:49PM 11 Mr. Bongiovanni and Peter Gerace were friends. They go back  
02:49PM 12 to childhood. Nobody's disputing that. Friendship is not  
02:49PM 13 criminal.

02:49PM 14 Somebody becoming friends with somebody else who is  
02:49PM 15 in law enforcement does not establish a conspiracy.

02:49PM 16 Somebody talking to their friend, even after they  
02:49PM 17 join the DEA, and communicating with them openly on a  
02:49PM 18 DEA-issued phone, does not establish a conspiracy if there is  
02:49PM 19 not discussion of entering into some sort of agreement or at  
02:49PM 20 least an implication of them entering into an agreement to do  
02:49PM 21 something unlawful.

02:49PM 22 And to that point, Mr. Bongiovanni communicated with  
02:49PM 23 Peter Gerace on his DEA-issued phone which was property of the  
02:50PM 24 DEA. That was not the type of thing that they needed to get  
02:50PM 25 some sort of special authorization to get access to. You

02:50PM 1 heard testimony, that phone belongs to DEA. They -- the DEA  
02:50PM 2 or investigators in conjunction with administration of DEA  
02:50PM 3 could have scooped up that phone at any time.

02:50PM 4 This investigation started before Mr. Bongiovanni  
02:50PM 5 went into administrative retirement in February of 2020, and  
02:50PM 6 there's no effort to retrieve his phone. They meet with him,  
02:50PM 7 have interviews with him, they never ask to look at his phone  
02:50PM 8 or see his phone. They end up having records, some from  
02:50PM 9 Peter's phone and then there's records from the phone  
02:50PM 10 companies establishing that there was communication. The  
02:50PM 11 communication was between Peter Gerace and Mr. Bongiovanni on  
02:50PM 12 his phone.

02:50PM 13 And there's no discussion of bribery, or can you do  
02:50PM 14 this, can you -- can you look out for me, can you intervene?  
02:51PM 15 I think I might be in trouble, can you find out if I'm being  
02:51PM 16 investigated for something?

02:51PM 17 The most they have is that recording where Peter very  
02:51PM 18 casually says something like, hey, I'm wondering if a drug  
02:51PM 19 dealer -- and I'm going to misphrase it but something along  
02:51PM 20 the lines, wonder if a drug dealer, if they can track these --  
02:51PM 21 if they can -- these TracFones, these TracFones. The way --  
02:51PM 22 the wording of it suggests he's asking a question, and there  
02:51PM 23 is some context to it that we're missing. He's not saying  
02:51PM 24 anything to suggest he's the drug dealer, or to suggest that  
02:51PM 25 he's even asking about a particular drug dealer.

02:51PM 1                 The reality is, and this is common sense, something  
02:51PM 2 like that is not the secret details of an investigation. He's  
02:51PM 3 not asking for the secret details of an investigation, he's  
02:51PM 4 asking about what's been referred to as law enforcement  
02:51PM 5 techniques. We all can imagine that that type of question  
02:51PM 6 probably could have been answered by Googling, but he called  
02:51PM 7 his DEA friend.

02:51PM 8                 The idea that he did it because the DEA agent is on  
02:51PM 9 retainer is just silly. He did it to the DEA-issued phone.

02:52PM 10               If you think that that call related to some sort of  
02:52PM 11 criminal effort on Mr. Gerace's behalf, why is that the worst  
02:52PM 12 thing that could you find? That would suggest that he's so  
02:52PM 13 sloppy he's calling and asking -- leaving voicemails, recorded  
02:52PM 14 voicemails, asking about criminal effort, and nowhere else in  
02:52PM 15 the text messages, nowhere else is there any evidence of that  
02:52PM 16 whatsoever? That was -- there's no context of that.

02:52PM 17               Suggesting that it's anything other than innocuous is  
02:52PM 18 asking you to speculate. It's not a reasonable inference.  
02:52PM 19 It's one inference, but it is one of many inferences that can  
02:52PM 20 be drawn as to what was going on. We have no context at all.

02:52PM 21               They're communicating on Mr. Bongiovanni's DEA-issued  
02:52PM 22 phone. The suggestion and insinuation Mr. Bongiovanni was  
02:53PM 23 trying to hide his relationship from Mr. Gerace is just  
02:53PM 24 nonsense.

02:53PM 25               Not only was he talking on his DEA-issued phone, he,

02:53PM 1 when -- when Peter Gerace was at that -- that reunion where he  
02:53PM 2 runs into Casullo, he's not in a criminal conspiracy with  
02:53PM 3 Bongiovanni. If he were, you wouldn't tell the DEA agent  
02:53PM 4 who -- that you just ran into, hey, this other DEA agent's  
02:53PM 5 across the street, let's go, go see him.

02:53PM 6 That's consistent with a friendship. That's not  
02:53PM 7 consistent with somebody who is -- who is protecting a  
02:53PM 8 conspiracy. It didn't make any sense.

02:53PM 9 I want to go through the events that were discussed  
02:53PM 10 in a little bit more detail, and I asked that the government  
02:53PM 11 put up Exhibit 555, their -- their -- their summary exhibit,  
02:53PM 12 because in this exhibit, they went through and essentially  
02:53PM 13 identified the different actions that are referred to in the  
02:54PM 14 overt acts and that they talked about on their closing  
02:54PM 15 argument so, we're going to kinda use this as a guide post.  
02:54PM 16 We'll go through it.

02:54PM 17 I'm going to make a number of points as we go  
02:54PM 18 through. And, again, just to go back to where we were in the  
02:54PM 19 beginning, what I say does not limit your ability to  
02:54PM 20 critically think about these things, it's not to -- this  
02:54PM 21 doesn't prevent you from coming up with other points of  
02:54PM 22 argument or other things about what they gave you that doesn't  
02:54PM 23 make sense. This is just some observations that I'm going to  
02:54PM 24 make. Okay?

02:54PM 25 First, go all the way back to the very beginning, the

02:54PM 1 2005 Craig Border DEA search. This is a conversation that the  
02:54PM 2 evidence of this relates to R.A. telling you about a  
02:54PM 3 conversation that Peter Gerace said that he had with  
02:54PM 4 Bongiovanni, and she's recalling details of a conversation  
02:54PM 5 that occurred nearly two decades ago.

02:55PM 6 It is so far back that I think we can all expect it  
02:55PM 7 would be impossible to remember the nuance of what was said  
02:55PM 8 during that conversation or what other circumstances  
02:55PM 9 surrounded it. But even if you are to accept as a general  
02:55PM 10 premise, despite two decades of time having passed and despite  
02:55PM 11 nothing else from any of the people who were at that search  
02:55PM 12 warrant execution, any testimony about what happened there or  
02:55PM 13 whether Mr. Bongiovanni had contact with anything, despite  
02:55PM 14 not -- none of that being presented to you, if you accept as a  
02:55PM 15 general premises -- a general premise that -- that  
02:55PM 16 Mr. Bongiovanni ends up sharing something that he shouldn't  
02:55PM 17 have with his friend Peter Gerace, that does not establish a  
02:55PM 18 conspiracy. That is a shortcut. The government is trying to  
02:55PM 19 bypass an essential component of this.

02:56PM 20 That is exactly what I was talking about. If  
02:56PM 21 Mr. Bongiovanni did something that he wasn't supposed to do as  
02:56PM 22 a DEA agent, you don't just suddenly assume there's a  
02:56PM 23 conspiracy between these two. You don't know what the context  
02:56PM 24 of that conversation was, or to the extent that Peter Gerace  
02:56PM 25 was entering into an agreement because some information was

02:56PM 1 shared with him.

02:56PM 2 Mr. Bongiovanni might have done something wrong. He  
02:56PM 3 might have been -- maybe it's something that he should have  
02:56PM 4 been reprimanded for the same way Special Agent Casullo was  
02:56PM 5 reprimanded over something that happened in Las Vegas  
02:56PM 6 involving one of Peter Gerace's best friends.

02:56PM 7 But that's what we're talking about. We're not  
02:56PM 8 talking about a conspiracy.

02:56PM 9 And I want to go forward. And as we go forward, we  
02:56PM 10 get to the 2000 -- or, I'm sorry, we go forward, we get to the  
02:56PM 11 2008 Bongiovanni cold approach. And I want to focus on this  
02:56PM 12 one because it's one of the most ridiculous examples of a  
02:57PM 13 conspiracy to defraud the United States.

02:57PM 14 On here, they list who the relevant witnesses are.  
02:57PM 15 The relevant witness for this particular account is Chris  
02:57PM 16 Wisniewski.

02:57PM 17 Chris Wisniewski testified there was an  
02:57PM 18 investigation. Bongiovanni said why don't I -- I know this  
02:57PM 19 guy. He doesn't hide the fact that he knows him, he's  
02:57PM 20 upfront. I know him back in the neighborhood.

02:57PM 21 He doesn't recall 15 years ago Bongiovanni sharing  
02:57PM 22 details of when they went out to dinner and things like that.  
02:57PM 23 It's like 15 years ago. Who knows what was actually shared?

02:57PM 24 What he remembers is he at least acknowledges, this  
02:57PM 25 is somebody I've known for a long time. Why don't I try a

02:57PM 1 code approach?

02:57PM 2 No visitation on that that comes through in the  
02:57PM 3 evidence. No -- no one that can reveal that he's a target.

02:57PM 4 The testimony pretty much suggested Peter Geraci or  
02:57PM 5 Peter Gerace was not a very serious target of this  
02:57PM 6 investigation. There was the idea that, sure, give it a shot,  
02:57PM 7 maybe you can get some information.

02:57PM 8 That was the way Agent Wisniewski testimony's came  
02:58PM 9 across. And the whole premise behind this idea that something  
02:58PM 10 inappropriate happened here is that -- and it just came up in  
02:58PM 11 closing, this argument that's being presented to you that this  
02:58PM 12 cold approach is a way of tripping off Mr. Gerace.

02:58PM 13 Now when we talked to this witness on  
02:58PM 14 cross-examination, we talked about how people are tipped off  
02:58PM 15 about investigations through a number of investigative  
02:58PM 16 techniques, search warrants, being pulled over sometimes or  
02:58PM 17 pulled into a room when you're interviewed.

02:58PM 18 Just because a cold approach is one type of  
02:58PM 19 investigative technique that reveals that there's a potential  
02:58PM 20 involvement in an investigation doesn't mean that's the only  
02:58PM 21 way somebody could -- could learn of it. But there, one of  
02:58PM 22 the most interesting -- target letter search warrants aside,  
02:58PM 23 one of, I think, the most interesting aspects of -- of how  
02:58PM 24 somebody could be tipped off was -- was in this question.  
02:59PM 25 Well, first, the question was asked --

02:59PM 1           And by the way, you'll be told by the judge you can  
02:59PM 2 ask for read backs of testimony. Sometimes that helps. So,  
02:59PM 3 this was a long trial, and there are certain times where  
02:59PM 4 you're gonna say, okay, I remember something being said on  
02:59PM 5 direct, what happened on cross with that witness? Or, what  
02:59PM 6 was the inconsistency between these two individuals. You'll  
02:59PM 7 be able to ask for read backs.

02:59PM 8           I'm going to just refer to a couple of pieces of  
02:59PM 9 testimony as we go forward here.

02:59PM 10          Special Agent Wisniewski was asked: Just to be  
02:59PM 11 clear, search warrants and target letters, they're just two  
02:59PM 12 specific examples of how somebody could be alerted to the  
02:59PM 13 target of the investigation? He says yes.

02:59PM 14          And then this is the part that I think is most  
02:59PM 15 interesting, and just absolutely decimates this allegation  
02:59PM 16 that it was all done to tip Peter Gerace off. And it's so  
02:59PM 17 straightforward.

02:59PM 18          Question: If Mr. Bongiovanni was trying to alert a  
02:59PM 19 target to an investigation, is the cold approach the only way  
02:59PM 20 to do that?

02:59PM 21          No.

02:59PM 22          Question: In fact, he can just go tell the person  
03:00PM 23 that they're being investigated, couldn't he?

03:00PM 24          Correct.

03:00PM 25          Follow-up question: He wouldn't have to go through

03:00PM 1 this effort of involving the DEA and his supervisors, and  
03:00PM 2 other people going through official mechanisms to see if  
03:00PM 3 information is available, correct?

03:00PM 4           Correct.

03:00PM 5           Think about that. The government's whole premise  
03:00PM 6 falls apart. He did a cold approach to tip him off? Why  
03:00PM 7 would you alert your supervisors? Why would you involve the  
03:00PM 8 DEA, make official paperwork, to tell somebody that they're  
03:00PM 9 being investigated, if you actually have some corrupt intent?  
03:00PM 10 Why wouldn't you just go tell them? There's no documentation  
03:00PM 11 of it.

03:00PM 12           Nobody would even necessarily know that you saw the  
03:00PM 13 chart. There'd be no documents the government's pulling up  
03:00PM 14 15 years later, misinterpreting, trying to sway a jury away  
03:00PM 15 from the truth and towards a narrative.

03:00PM 16           If Mr. Bongiovanni was corrupt the way the government  
03:01PM 17 has alleged, it doesn't prove that Mr. Gerace is guilty of  
03:01PM 18 anything.

03:01PM 19           But separating us from that for a moment, they didn't  
03:01PM 20 prove Mr. Bongiovanni was corrupt. They certainly didn't with  
03:01PM 21 this example. And if this example gives you reasonable doubt,  
03:01PM 22 you should consider that in assessing all of these examples.

03:01PM 23           This is what I said at the beginning of the closing  
03:01PM 24 argument. Your job doesn't end when the government tells you  
03:01PM 25 how to think. Some of you folks have probably already thought

03:01PM 1 about that. I don't think I'm probably the first one to  
03:01PM 2 say -- well, I -- well, the witness was cross-examined on it,  
03:01PM 3 so I'm sure some of you did think about it at least.

03:01PM 4 Some of you may have thought about it even if I  
03:01PM 5 didn't ask him, which is part of the critical thinking  
03:01PM 6 process. Great. Well, being told that he went through this  
03:01PM 7 process of documenting all of this and involving his  
03:01PM 8 supervisors and potentially bringing his partner with him?

03:01PM 9 Because there was testimony that Joseph Palmieri was his  
03:01PM 10 partner who may have went with him, Chris Wisniewski didn't  
03:02PM 11 know whether he did or not. All of that to tip him off,  
03:02PM 12 instead of just tipping him off? Doesn't make any sense.

03:02PM 13 Well, then he derails the investigation. Then the  
03:02PM 14 response is, well, there's more to it than that. Yes, we  
03:02PM 15 argue that it was all to tip him off, but we also argued that  
03:02PM 16 he came back and said there's no information and that ended  
03:02PM 17 it.

03:02PM 18 That's not the case. Wisniewski never testified to  
03:02PM 19 that. Wisniewski never said I abandoned any interest in  
03:02PM 20 Mr. Gerace because of the fact that Mr. Bongiovanni said he  
03:02PM 21 didn't have any relevant information.

03:02PM 22 Is that how you think investigations are done? We go  
03:02PM 23 ask potential targets do you have information, they say no,  
03:02PM 24 and we say okay, good enough? That makes no sense at all.

03:02PM 25 This 2005 or 2008 incident, the way they told you to

03:02PM 1 think about it, is completely contrary to basic logic and  
03:02PM 2 common sense.

03:03PM 3 And I understand that at various points in this case  
03:03PM 4 there was very much a kitchen-sink approach of we'll just  
03:03PM 5 allege different theories and maybe something will stick. But  
03:03PM 6 that's now how this works.

03:03PM 7 If there was any reasonable doubt, if you hesitate as  
03:03PM 8 to any element, you have to acquit. And if they've presented  
03:03PM 9 you an argument that should make you wonder about what was  
03:03PM 10 presented to you throughout the other arguments, that  
03:03PM 11 definitely gives you a reason to hesitate. That definitely is  
03:03PM 12 reasonable doubt.

03:03PM 13 2009, U.S. Probation search. Mr. Bongiovanni  
03:03PM 14 intervenes on Mr. Gerace's behalf and does absolutely nothing.  
03:03PM 15 What did the probation officer say on direct? Didn't impact  
03:03PM 16 anything I had to do, that Mr. Bongiovanni reached out.

03:03PM 17 Well, it was his intent.

03:04PM 18 Look, here is how that whole incident played out if  
03:04PM 19 you think about the evidence. Mr. Bongiovanni knows Peter  
03:04PM 20 Gerace. Again, doesn't hide the relationship, says I know  
03:04PM 21 him, he goes way back, he's a good guy. Tries to set up a  
03:04PM 22 meeting with the FBI knowing there is somebody investigating  
03:04PM 23 the case.

03:04PM 24 They have a conversation where Special Agent  
03:04PM 25 Bongiovanni introduces Special Agent Herbst to Mr. Gerace,

03:04PM 1 makes the connection. If he really wanted to give  
03:04PM 2 Mr. Herbst -- Special Agent Herbst the impression that he's --  
03:04PM 3 that he's a confidential source, he didn't need to set up that  
03:04PM 4 meeting. He could have just called and said oh, I've been  
03:04PM 5 working with Mr. Gerace for a long time.

03:04PM 6 He set up a meeting giving Mr. Herbst an opportunity  
03:04PM 7 to meet with Mr. Gerace.

03:04PM 8 And you heard from Mr. Lepiane that there was a phone  
03:04PM 9 call after where Mr. Herbst reported back at that time, oh, he  
03:04PM 10 doesn't really have any relevant information right now, but  
03:04PM 11 I'll continue to work with him. That is totally different  
03:04PM 12 than that testimony you got. The testimony that  
03:05PM 13 Mr. Bongiovanni derailed the investigation. That is nonsense.  
03:05PM 14 That is not at all what happened back then.

03:05PM 15 Mr. Gerace did not get a single benefit from  
03:05PM 16 Mr. Bongiovanni getting involved. And what did  
03:05PM 17 Mr. Bongiovanni do? He connected Mr. Gerace with Mr. Herbst.  
03:05PM 18 Nothing came out of it.

03:05PM 19 This whole idea that Mr. Bongiovanni derailed the  
03:05PM 20 investigation back in 2009 is also ridiculous for another  
03:05PM 21 reason. The U.S. Attorney's Office had already been involved  
03:05PM 22 in conversations with Mr. Herbst. Mr. Herbst said I have a  
03:05PM 23 prosecutor ready to go. And the way the government's arguing  
03:05PM 24 it to you would suggest that, well, because of this one  
03:05PM 25 conversation, the agency that decides to prosecute somebody

03:05PM 1 apparently just never asks about him again. That makes no  
03:05PM 2 sense either.

03:05PM 3 There is holes all over the place in these scenarios  
03:05PM 4 that they presented you with.

03:05PM 5 The U.S. Attorney's Office did not prosecute  
03:05PM 6 Mr. Gerace after supposedly saying that they might be  
03:05PM 7 interested in the case, if you believe the testimony. And  
03:06PM 8 they drop it because, what? Herbst goes to the U.S.  
03:06PM 9 Attorney's Office and says I think that -- I think that  
03:06PM 10 Mr. Gerace might be a confidential informant for the DEA?  
03:06PM 11 That's the end of the prosecution? The U.S. Attorney's Office  
03:06PM 12 never follows up on that?

03:06PM 13 Are we being serious here? This is what they tell  
03:06PM 14 you to accept? This is how they tell you to think? It  
03:06PM 15 doesn't take much for this all to fall apart.

03:06PM 16 2015 overdose. They have Katrina Nigro listed up  
03:06PM 17 here. Katrina Nigro is not there in the evenings in 2015, she  
03:06PM 18 testified to that. When asked about it, she says they didn't  
03:06PM 19 ask me. I just never told them that.

03:06PM 20 Katrina Nigro is not a witness to an overdose. She  
03:07PM 21 does not prove up an incident that apparently happened in  
03:07PM 22 2015.

03:07PM 23 Well, there are two other individuals listed here,  
03:07PM 24 Doug Augustyniak and Anthony Casullo. Doug Agustyniak,  
03:07PM 25 somebody the government says you shouldn't believe any of his

03:07PM 1 testimony other than the part that we locked him in on in the  
03:07PM 2 grand jury. Doug Augustyniak never gave you any testimony  
03:07PM 3 suggest that he's friends with Mr. Gerace. He left Pharaoh's  
03:07PM 4 back in 2018.

03:07PM 5 He said, I'm friends with Brian Rosenthal. He did  
03:07PM 6 not say anything similar about Mr. Gerace. He did say he has  
03:07PM 7 a problem with his prosecution. Okay.

03:07PM 8 Adding that he friends with Mr. Gerace, or during the  
03:07PM 9 cross or redirect or whatever, saying well, you liked your job  
03:07PM 10 at Pharaoh's, that's fine, he was not working there anymore.  
03:07PM 11 He has no loyalty indicated to Mr. Gerace. By the time he  
03:07PM 12 went into the grand jury he didn't have any loyalty to  
03:08PM 13 Mr. Gerace, and that's when they said they locked him into  
03:08PM 14 this testimony that this happened in 2015.

03:08PM 15 And they tell you you know that Agent Casullo's story  
03:08PM 16 is true because it matches up with Doug Augustyniak. Now  
03:08PM 17 think about this one. What did -- what did Doug Augustyniak  
03:08PM 18 say? He said he calls Peter Gerace, Peter Gerace says get her  
03:08PM 19 out of there.

03:08PM 20 How in the world does that match up with what Agent  
03:08PM 21 Casullo claims that Mr. Bongiovanni said? Because there was  
03:08PM 22 an overdose that Mr. Bongiovanni, according to Agent Casullo,  
03:08PM 23 years later he gave advice on, who knows what Agent Casullo  
03:08PM 24 had heard in the meantime.

03:08PM 25 If you were to believe Agent Casullo's account of

03:08PM 1 what Mr. Bongiovanni said, and then go further to believe what  
03:08PM 2 Mr. Bongiovanni had said was true during the course of that  
03:08PM 3 conversation, then Doug Augustyniak's testimony would have  
03:09PM 4 been Peter Gerace -- I called Peter Gerace, got ahold of him,  
03:09PM 5 he said hold on a second, I'm gonna need about five, ten  
03:09PM 6 minutes to figure out what to do here, hung up, call him back  
03:09PM 7 sometime later. Okay. Get the body out of there.

03:09PM 8 That's not the testimony. The testimony is, right or  
03:09PM 9 wrong, if you believe Doug Augustyniak, Peter Gerace reacted  
03:09PM 10 saying get her out of there. Take her somewhere.

03:09PM 11 And that is something that, if it's true, we may all  
03:09PM 12 think that that was one of poorest decisions Peter Gerace  
03:09PM 13 could have made, and that has nothing to do with the charges  
03:09PM 14 before you. It may be a sin, but as Mr. Soehnlein said in the  
03:09PM 15 opening, not every sin is a crime.

03:09PM 16 What we do know is that if you believe that testimony  
03:09PM 17 from Doug Augustyniak, a witness the government said you  
03:09PM 18 should disregard in every other respect, their own witness, it  
03:10PM 19 makes no sense to say you should just pick out the part we --  
03:10PM 20 we want you to listen to. But if you believe his testimony,  
03:10PM 21 that couldn't have happened with Bongiovanni. It doesn't  
03:10PM 22 match up.

03:10PM 23 What makes more sense is the rumors and the  
03:10PM 24 information that at some point could have gotten to Special  
03:10PM 25 Agent Casullo informs on how he describes a conversation later

03:10PM 1 on. All he had to hear was a rumor that there was an overdose  
03:10PM 2 at some point, and he can make the allegation well,  
03:10PM 3 Mr. Bongiovanni said that -- that he helped Peter Gerace with  
03:10PM 4 an overdose.

03:10PM 5 The government says it matches up to Doug  
03:10PM 6 Augustyniak's testimony, and it just doesn't. There's nothing  
03:10PM 7 to support that. And just on closing arguments, that's how  
03:10PM 8 you know it's true, so I guess we don't.

03:10PM 9 I guess with a little bit of thought, we don't just  
03:10PM 10 accept what the government tells you. It just doesn't  
03:10PM 11 actually match up.

03:10PM 12 And, again, that's reasonable doubt. Not just as to  
03:10PM 13 this overt act, but as to all of them.

03:10PM 14 Special Agent Casullo's investigation of Gerace.

03:11PM 15 There was clearly so much more about Special Agent Casullo and  
03:11PM 16 his relationship with Mr. Gerace than what he testified to on  
03:11PM 17 direct.

03:11PM 18 And what was particularly interesting, even though he  
03:11PM 19 didn't -- he indicated he didn't recall it at first, but then  
03:11PM 20 was asked about some emails that he had sent, and he  
03:11PM 21 acknowledges he was having conversations with Special Agent  
03:11PM 22 Herbst in 2010 about Peter Gerace and Joe Bongiovanni. No  
03:11PM 23 real testimony from Special Agent Herbst about that, no  
03:11PM 24 testimony from Special Agent Casullo about it or, oh, yeah,  
03:11PM 25 we -- we might have talked about that or it might have

03:11PM 1 happened at some point. There was way more going on behind  
03:11PM 2 the scenes than what you were given as jurors.

03:11PM 3 Special Agent Casullo definitely had an interest in  
03:12PM 4 Mr. Gerace and Mr. Bongiovanni going back years before he  
03:12PM 5 claims that he got interested in Pharaoh's because the class  
03:12PM 6 clown said he's gonna go to Pharaoh's and do a line of coke  
03:12PM 7 off a stripper's ass.

03:12PM 8 Did anybody believe Special Agent Casullo when I  
03:12PM 9 said he was joking when he said that to you, and he said, oh,  
03:12PM 10 I took it very seriously.

03:12PM 11 Come on. He -- he says, I just developed an  
03:12PM 12 investigation that day. I heard things during this reunion  
03:12PM 13 that made me think Peter Gerace might -- might be somebody  
03:12PM 14 that I want to investigate. Somebody that --

03:12PM 15 I was talking to, Special Agent Herbst back in 2010,  
03:12PM 16 but I'm not going to reveal that to the jury unless confronted  
03:12PM 17 with an email I sent.

03:12PM 18 -- somebody that I have some issues going back to  
03:12PM 19 Vegas with one of Peter Gerace's best friends that resulted in  
03:12PM 20 some sort of reprimand.

03:12PM 21 Don't tell me there's not more going on behind the  
03:12PM 22 scenes with Special Agent Casullo. We did not hear the full  
03:13PM 23 story.

03:13PM 24 And this whole thing about this confrontation with  
03:13PM 25 Mr. Bongiovanni on its face doesn't make sense.

03:13PM 1           That Mr. Bongiovanni would be worried that there's  
03:13PM 2 calls between him and Mr. Gerace doesn't make sense. They're  
03:13PM 3 on his DEA-issued phone. That's what we're talking about.

03:13PM 4           And if he's concerned about the calls, all he has to  
03:13PM 5 do is go say, hey, I'm worried about the calls, let me explain  
03:13PM 6 the context. We're friends going back. That's not a surprise  
03:13PM 7 to you. You saw -- you saw us -- you saw us out at Tappo  
03:13PM 8 together, you came and joined us. That's all he has to say.

03:13PM 9           The idea that he would say, I'm worried that you're  
03:13PM 10 going to check the call logs and find out about a call I made  
03:13PM 11 involving an overdose, how does that make sense? How does it  
03:13PM 12 make sense that Mr. Bongiovanni concerned about these call  
03:13PM 13 logs being received, which include his DEA-issued phone, would  
03:13PM 14 go into a meeting and say, let me tell you about a call that  
03:13PM 15 would potentially incriminate me in some way.

03:14PM 16           What? That's their case? That's the public  
03:14PM 17 corruption? That is so twisted. It is not at all based on  
03:14PM 18 logic. It is not based on common sense, and at a minimum, you  
03:14PM 19 should hesitate to accept what they're giving you here.

03:14PM 20           We already talked about the voicemail. All these  
03:14PM 21 messages and that's -- you heard the tone of the voice.  
03:14PM 22 There's no -- nobody's nervous on that. Nobody's referencing  
03:14PM 23 a particular incident.

03:14PM 24           Was it a stupid voicemail to leave? Yeah, if you  
03:14PM 25 knew you were gonna ultimately end up in a courtroom being

03:14PM 1 accused of entering into a conspiracy with your friend, then  
03:14PM 2 yeah. I'm sure that whatever he wanted to know, he could have  
03:14PM 3 looked it up on Google instead.

03:14PM 4 But the idea that that is an overt act, that that's  
03:14PM 5 proof of a conspiracy, especially when you consider all of the  
03:14PM 6 holes and the logic associated with all these other incidents,  
03:15PM 7 that that's it? It's just not. It's not it.

03:15PM 8 And as far as those 2019 memos, I don't know, fine.  
03:15PM 9 I think Mr. Bongiovanni knew he was being investigated and  
03:15PM 10 tried to say some things to minimize his relationship with  
03:15PM 11 Peter Gerace. Okay. It doesn't mean Peter Gerace was part of  
03:15PM 12 a conspiracy. It just doesn't.

03:15PM 13 He knew people were trying to make a case against  
03:15PM 14 him, that people were gonna twist every interaction he ever  
03:15PM 15 had with Peter Gerace. So he may have made reports that --  
03:15PM 16 I'm just not even gonna comment on. I'm not saying that  
03:15PM 17 they're false or anything, I don't have a position on it. It  
03:15PM 18 doesn't matter. It doesn't prove a conspiracy against  
03:15PM 19 Mr. Gerace.

03:15PM 20 They did not prove Count 1. They did not. There is  
03:15PM 21 reasonable doubt all across those elements. There is reasons  
03:16PM 22 to hesitate across those elements. And if you want to just  
03:16PM 23 accept what the government's giving you, if you think anybody  
03:16PM 24 else is reasonable to hesitate, then you know reasonable doubt  
03:16PM 25 exists, and you have to acquit. That's the instruction.

03:16PM 1            You folks, I'm sure, can look at the arguments that  
03:16PM 2 have been presented to you and see so many more problems than  
03:16PM 3 what I've just presented to you. You are capable of seeing  
03:16PM 4 all of the flaws in what was given to you, it doesn't have to  
03:16PM 5 come from my mouth.

03:16PM 6            I imagine and believe that each of you individually  
03:16PM 7 and collectively can come up with points well beyond what I  
03:16PM 8 just said, I truly do believe that.

03:16PM 9            The only verdict that is supported in Count 1 is a  
03:16PM 10 verdict of not guilty.

03:16PM 11           And by extension, Count 2, it basically flows off of  
03:16PM 12 that. But the idea would be also -- presumably have to  
03:16PM 13 believe Katrina -- Katrina Nigro about these envelopes,  
03:16PM 14 something that she's changed over time, how many envelopes  
03:17PM 15 there are, that there's been different testimony about it.  
03:17PM 16 The idea that on closing they said, oh, she was in his inner  
03:17PM 17 circle, she could be trusted.

03:17PM 18           She told you that in 2014, she wasn't even allowed to  
03:17PM 19 be at the club. Do you think that Peter Gerace is in a  
03:17PM 20 conspiracy and he's giving bribes to -- to Joseph Bongiovanni  
03:17PM 21 and having to go through Katrina Nigro? Somebody who had a  
03:17PM 22 reputation for dishonesty? Somebody that it only took a  
03:17PM 23 couple more years before the relationship came apart and she  
03:17PM 24 was trying put false charges on him, and leaving him  
03:17PM 25 voicemails saying I'm going to destroy your life? Do you

03:17PM 1 think that she's the one in the inner circle that he was gonna  
03:17PM 2 have deliver envelopes?

03:17PM 3 Do you think there's a reason why the number has  
03:17PM 4 changed so many times? She forgets what she says in the past.  
03:17PM 5 The numbers change when she talks to law enforcement on  
03:17PM 6 different occasions or she testifies because the details are  
03:17PM 7 bogus.

03:17PM 8 Count 2 is not guilty. There's reasonable doubt all  
03:18PM 9 over the place. Katrina Nigro is not a person that any of us  
03:18PM 10 should reasonably think we could rely on. Every single one of  
03:18PM 11 us should feel like we would have to at least hesitate to rely  
03:18PM 12 on her on a determination of this importance.

03:18PM 13 Okay. Count -- Counts 3 and 4 is the drug  
03:18PM 14 conspiracy. I want to make a couple of points here. First of  
03:18PM 15 all, I want to be candid with you. There is obviously more  
03:18PM 16 evidence of drugs than some of the other areas that we're  
03:18PM 17 talking about. Okay? That doesn't mean that when you hear  
03:18PM 18 what the charges are here, that the verdict is guilty.

03:18PM 19 You're not -- they're not -- this is not  
03:19PM 20 oversimplified in a way of were there drugs at Pharaoh's?  
03:19PM 21 Well, then, convict.

03:19PM 22 I want to talk about both of those charges that  
03:19PM 23 relate to the drugs. First, maintaining a drug-involved  
03:19PM 24 premises.

03:19PM 25 Now, a significant respect that drugs are part of it,

03:19PM 1 the government has oversold the case when they say it's part  
03:19PM 2 of the business model. That's just not the case.

03:19PM 3 You heard a lot of testimony about people being fired  
03:19PM 4 when they actually got caught with drugs. Those who were  
03:19PM 5 using drugs tried to hide it.

03:19PM 6 Some of the witnesses -- some of the government's own  
03:19PM 7 witnesses were fired at some point for drugs, had to go back  
03:19PM 8 to rehab -- had to go to rehab, and could only come back after  
03:19PM 9 that. So the idea that it's built into the business model is  
03:19PM 10 just not realistic, but to start as a starting point, on the  
03:19PM 11 maintaining drug premises -- on maintaining a drug premises  
03:19PM 12 charge, the judge is going to read the charge and the  
03:19PM 13 instruction, and I believe what you're going to hear is that  
03:20PM 14 the charge alleged is maintaining a drug-involved premises  
03:20PM 15 from 2006 to 2009. Beginning in 2006, ending -- I'm sorry, in  
03:20PM 16 2019. Ending in 2019. I -- this is easy to confuse.

03:20PM 17 The allegation isn't you just have to find beyond a  
03:20PM 18 reasonable doubt that at some point in that timeframe or for  
03:20PM 19 some periods of that timeframe or even for the majority of the  
03:20PM 20 timeframe, he was maintaining a drug premises. You have to  
03:20PM 21 find that he was maintaining the drug premises for the  
03:20PM 22 duration. That's the charge.

03:20PM 23 The government charged it that way. They said --

03:20PM 24 **MR. TRIPI:** Objection, misstatement.

03:20PM 25 **THE COURT:** Overruled.

03:20PM 1           **MR. FOTI:** -- they said Peter Gerace was engaged in  
03:20PM 2 maintaining a drug premises beginning in 2006 up to 2019. And  
03:20PM 3 what did we hear from the witnesses? Peter Gerace was totally  
03:21PM 4 out of the club for a whole year or more.

03:21PM 5           I know some of you may say, well, that sounds like  
03:21PM 6 some sort of technicality. It's not. That's the charge  
03:21PM 7 you're presented with. Beginning in 2006 all the way up to  
03:21PM 8 2019. If you have reasonable doubt whether he maintained the  
03:21PM 9 drug premises for the duration, you are to acquit.

03:21PM 10          The government could've charged this starting in  
03:21PM 11 2014, that's not the charge before you. The charge is going  
03:21PM 12 all the way back to 2006. And what did you hear in terms of  
03:21PM 13 testimony?

03:21PM 14          Well, Katrina Nigro, on something that she would have  
03:21PM 15 not realized it would ultimately have any relevance to the  
03:21PM 16 decisions you have to make acknowledges that he was out. He  
03:21PM 17 was out for -- for probably from 2012 to early 2014. You know  
03:22PM 18 that's the case because it's not just her testimony on that,  
03:22PM 19 there's pictures of the grand reopening party that you heard  
03:22PM 20 everybody testify about. And that grand reopening party was  
03:22PM 21 anchored to the end of the dispute between the two owners.

03:22PM 22          Don Parrino was an owner back in -- going back to the  
03:22PM 23 beginning, all the way up till 2014. And during the dispute  
03:22PM 24 in ownership, you heard multiple witnesses get up here and say  
03:22PM 25 things that there was a period of time where Peter Gerace was

03:22PM 1 out of the club.

03:22PM 2 You not only heard that from witnesses, you saw  
03:22PM 3 evidence of it in the government's summary charts. There was  
03:22PM 4 an exhibit that showed the phone calls between Mr. Gerace and  
03:22PM 5 Pharaoh's. And if you looked at the chart, without looking at  
03:22PM 6 the individual lines underneath, you would think, oh, look,  
03:22PM 7 he's -- he's -- he's making calls to Pharaoh's every single  
03:23PM 8 month.

03:23PM 9 But when we talked about it with a witness and got a  
03:23PM 10 little more specific, and when you looked at the exhibit in a  
03:23PM 11 little bit more detail, you saw he only included lines for the  
03:23PM 12 months that Peter Gerace made calls. And in 2013, there was  
03:23PM 13 only one month that there was any attempt to call at all.

03:23PM 14 I think there was some testimony from A.P.  
03:23PM 15 consistent, like other witnesses, with Peter Gerace being out  
03:23PM 16 of the club, and that he had tried to call at some point to  
03:23PM 17 get her back in and was unable to do so. He had no  
03:23PM 18 involvement with that at all.

03:23PM 19 Doug Augustyniak testified, and he didn't just  
03:23PM 20 testify on something you can just swipe away because, oh, I  
03:23PM 21 was -- the government doesn't want us to believe most of his  
03:23PM 22 testimony. Doug Augustyniak told you that he was fired by the  
03:23PM 23 Parrinos, they -- there was a change in a number of positions,  
03:23PM 24 and he was one that was out of the club along with Peter  
03:23PM 25 Gerace when they were in full ownership.

03:23PM 1           The government used that as a means to try to attack  
03:24PM 2 their own witness's credibility when they said to him: You  
03:24PM 3 got a job back, that was a pretty good job. You were paid  
03:24PM 4 well, right? It was Peter Gerace who hired you back after  
03:24PM 5 they gave control of ownership back again.

03:24PM 6           You're presented with the charge that you're  
03:24PM 7 presented with. It's not a charge you think that should have  
03:24PM 8 been presented to you. It's not about, you know, do we change  
03:24PM 9 the charge a little bit to accommodate the way the proof came  
03:24PM 10 in. This is not a small variance of dates. We're not talking  
03:24PM 11 about a few months. We're talking about an allegation of a  
03:24PM 12 continued control of maintenance.

03:24PM 13           You heard the elements already, Mr. Cooper, and  
03:24PM 14 you're going to hear them more directly from the judge,  
03:24PM 15 maintenance and control.

03:24PM 16           Peter Gerace had no control for over a year. And the  
03:24PM 17 government can on -- well, the government is going to have  
03:24PM 18 another opportunity to talk to you on rebuttal, they can tell  
03:24PM 19 you how you should disbelieve that. But we're talking about  
03:25PM 20 proof beyond a reasonable doubt, it's their burden. They --  
03:25PM 21 they -- it's their burden to prove that he was maintain --  
03:25PM 22 maintaining and controlling the premises all the way back from  
03:25PM 23 2006, all the way up to 2019.

03:25PM 24           And they are not going to rebut the evidence that  
03:25PM 25 came through their own witnesses that he was out of the club

03:25PM 1 for over a year, to the point where you could never convict  
03:25PM 2 beyond reasonable doubt.

03:25PM 3 But the time -- the timeframe matters. It matters to  
03:25PM 4 multiple counts. It's not just that one. It's the conspiracy  
03:25PM 5 for drug trafficking. It's the conspiracy for sex  
03:25PM 6 trafficking.

03:25PM 7 Candidly, going back a moment, it's probably not the  
03:25PM 8 conspiracy, the allegations regarding the conspiracy of -- of  
03:25PM 9 public corruption, because that one is not tethered to Peter  
03:25PM 10 Gerace engaging in a conspiracy that is anchored to Pharaoh's.

03:25PM 11 Well, I mean, really, that's your determination to  
03:26PM 12 make. And, really, when you look at it, and given the fact  
03:26PM 13 that some of the comments on closing were about the idea that  
03:26PM 14 Mr. Bongiovanni was protecting Pharaoh's, and Peter Gerace's  
03:26PM 15 involvement in Pharaoh's, maybe -- maybe that it does apply  
03:26PM 16 there, too, I don't know. But I am distinguishing it. There  
03:26PM 17 is obviously some difference here.

03:26PM 18 That timeframe wipes out the maintenance charge. And  
03:26PM 19 I would submit when you listen to the instructions and you  
03:26PM 20 hear that on these other conspiracy counts that these are  
03:26PM 21 conspiracies that are alleged to start well before Peter  
03:26PM 22 Gerace is out of the club and continue all the way through  
03:26PM 23 until when they are -- when -- when the charge indicates they  
03:26PM 24 end, that if you believe there's reasonable doubt as to  
03:26PM 25 whether the conspiracy charged in the indictment was committed

03:26PM 1 based on the fact that there is almost undisputed proof that  
03:26PM 2 Peter Gerace was not involved with Pharaoh's for over a year,  
03:26PM 3 then you have to acquit on all three of those counts.

03:27PM 4 Now, in addition to that, that -- that theoretically  
03:27PM 5 is the end of the analysis. The government will have an  
03:27PM 6 opportunity to rebut, they can argue to you why the conspiracy  
03:27PM 7 could survive Mr. Gerace being out of Pharaoh's despite the  
03:27PM 8 fact that that should sound a little bit inconsistent with  
03:27PM 9 what's been argued to you up to this point. But if they want  
03:27PM 10 to argue that the conspiracy survives, that the conspiracy is  
03:27PM 11 a continuing conspiracy that goes through an entire stretch of  
03:27PM 12 over a year that Peter Gerace is out of Pharaoh's, that this  
03:27PM 13 is one conspiracy that never stops, if they think that there's  
03:27PM 14 evidence to support that, then they'll present you those  
03:27PM 15 arguments. If you think there's reasonable doubt, you have to  
03:27PM 16 acquit. And there's other reasons to acquit as well.

03:28PM 17 Understanding that there are -- there is evidence  
03:28PM 18 that there was drugs at Pharaoh's, there is still a lack of  
03:28PM 19 evidence that really corroborates that Peter Gerace was  
03:28PM 20 involved in the way that some of the witnesses said he was.

03:28PM 21 His home was searched, Pharaoh's was searched twice,  
03:28PM 22 no evidence of drugs. There is no pictures of Mr. Gerace with  
03:28PM 23 drugs. There is no recordings other than the one that they  
03:28PM 24 gave you of Mr. Gerace ever talking about drugs. No wiretap  
03:28PM 25 calls like they had for Jeff Anzalone and K.L., who was not

03:28PM 1 charged. No messages on the entirety of his phone with all of  
03:28PM 2 these people that the government has referenced as potentially  
03:28PM 3 being coconspirators. Not a single message presented to you  
03:28PM 4 recall -- between Peter Gerace and Jessica Leyland out of his  
03:28PM 5 phone.

03:28PM 6 There's messages in that phone. You didn't see them.

03:28PM 7 And why do you think that is? Nothing consistent with Peter  
03:29PM 8 Gerace being involved in the way that some of the witnesses  
03:29PM 9 alleged he was.

03:29PM 10 And another thing about this charge, the conspiracy  
03:29PM 11 charge. The conspiracy itself, the agreement is an element.  
03:29PM 12 So you do have to find, in order to find him guilty,  
03:29PM 13 proof beyond a reasonable doubt that he was in an agreement  
03:29PM 14 with somebody else. That's more than finding that he used  
03:29PM 15 drugs himself. That's more than finding possession with  
03:29PM 16 intent to distribute.

03:29PM 17 You'll see in the indictment, or you'll hear in the  
03:29PM 18 indictment, there is a charge of possession with intent to  
03:29PM 19 distribute. It's the last count. It's a count of possession  
03:29PM 20 with -- bless you -- it's a count of possession with intent to  
03:29PM 21 distribute based on the allegation that Mr. Gerace had drugs  
03:29PM 22 in November at this incident in the basement, the -- the  
03:29PM 23 tampering incident. We're going to talk about that in a  
03:29PM 24 little bit.

03:29PM 25 In that situation, what you're finding is: Did he

03:29PM 1 possess it? Did he have the intent to distribute it? That's  
03:30PM 2 it.

03:30PM 3 Conspiracy is a lot more complicated than that. It's  
03:30PM 4 not just did he possess it. Did he possess it multiple times?  
03:30PM 5 Did he buy drugs at some point? Did he give drugs at some  
03:30PM 6 point? Those things alone don't automatically establish  
03:30PM 7 conspiracy. You have to listen to the judge's instruction.  
03:30PM 8 You have to find beyond a reasonable doubt that the conspiracy  
03:30PM 9 charged in the indictment in the timeframe that it's charged  
03:30PM 10 was an ongoing conspiracy that Mr. Gerace was involved in  
03:30PM 11 involving an agreement with others.

03:30PM 12 And you heard testimony of some people who primarily  
03:30PM 13 described personal use and incidents that are very similar to  
03:30PM 14 the charge of possession with intent to distribute in that  
03:30PM 15 November event. You just don't have dates associated with  
03:30PM 16 them, and it's all been wrapped together as a conspiracy  
03:30PM 17 count. But that doesn't mean that there was an agreement  
03:30PM 18 consistent with what you would have to find beyond a  
03:31PM 19 reasonable doubt. So that charge is a little bit more  
03:31PM 20 complicated than the way maybe it was argued on the closing.

03:31PM 21 And, again, the timeframe is a pretty big piece of  
03:31PM 22 this. If Peter Gerace is out of Pharaoh's for over a year,  
03:31PM 23 there's no real way to find beyond a reasonable doubt that  
03:31PM 24 he's engaged in this conspiracy for the duration of the  
03:31PM 25 conspiracy that is alleged in the indictment.

03:31PM 1               Okay. Count 5 is the sex trafficking. And sort of  
03:31PM 2 at the outset of this, I will again note, well, this one --  
03:31PM 3 this one is another one of those kitchen-sink charges.

03:31PM 4               They gave three buckets. And they said, look, just,  
03:31PM 5 you know, pick your poison. Just find one. Find him guilty  
03:32PM 6 of one of these. Even if there's problems with each of them  
03:32PM 7 individually, just -- just, you know, pick.

03:32PM 8               That's not how it works. So you don't just find  
03:32PM 9 proof beyond a reasonable doubt because they gave you  
03:32PM 10 different scenarios to pick from. It's not about which one is  
03:32PM 11 most likely, it's about did they prove the elements beyond a  
03:32PM 12 reasonable doubt. And the three buckets, as they described  
03:32PM 13 them, is what happens upstairs, what happens in the VIP area,  
03:32PM 14 and the stag parties. And let's go in reverse order.

03:32PM 15               The stag parties. Proof beyond a reasonable doubt  
03:32PM 16 Mr. Gerace was engaged in a conspiracy because of what?  
03:32PM 17 There's testimony that there was dancers that worked at  
03:32PM 18 both -- some of these stag parties and Mr. Gerace? What is  
03:32PM 19 there beyond that?

03:32PM 20               Katrina Nigro making some of this up, she said a  
03:32PM 21 couple different things. At one point, she said Peter Gerace  
03:32PM 22 sometimes didn't want dancers from the stag party to dance at  
03:32PM 23 Pharaoh's because of things that they would do. She makes a  
03:32PM 24 comment about that at some point, which is not consistent with  
03:32PM 25 the conspiracy involving the stag parties. But she does give

03:32PM 1 the government what they're looking for on the stag parties  
03:33PM 2 saying, oh, there's some sort of benefit, there's some sort of  
03:33PM 3 financial agreement there.

03:33PM 4 And she never really explains it. And I would submit  
03:33PM 5 that that's because it's just absolutely bogus. There's  
03:33PM 6 nowhere else where you see any testimony establishing that  
03:33PM 7 there is an actual conspiracy between these two.

03:33PM 8 I think that the evidence is established that there  
03:33PM 9 were dancers at Pharaoh's who also danced at these different  
03:33PM 10 stag parties. There's also evidence to establish that dancers  
03:33PM 11 would move between clubs. You heard it from almost --

03:33PM 12 A lot of the dancers, a lot of the government's  
03:33PM 13 witnesses say, well, I was dancing at this one club, and then  
03:33PM 14 I switched over because I heard good things at Pharaoh's.

03:33PM 15 Some of them said I danced at Pharaoh's, and then I  
03:33PM 16 started dancing for the stag parties for a year.

03:33PM 17 That -- there's no conspiracy here between different  
03:33PM 18 clubs and different stag parties. These are separate  
03:33PM 19 entities.

03:33PM 20 The government's own witness, A.G., told you that  
03:33PM 21 because she danced for No Limit for a year. The government  
03:33PM 22 makes a big point of why she was fired, and we want you to  
03:34PM 23 assume that she was fired because she wouldn't go upstairs  
03:34PM 24 with Mr. Gerace. Again, just accept that, because that's what  
03:34PM 25 we want to allege here. We just want you to accept the

03:34PM 1 inference that we want to draw on it. Okay?

03:34PM 2 Whatever the reason is, what's the most important  
03:34PM 3 piece of A.G.'s testimony? She never went upstairs, she was  
03:34PM 4 in the VIP Room for -- for two days straight, never indicates  
03:34PM 5 she saw any sex acts, never testifies about anything  
03:34PM 6 suggesting there's sex trafficking at Pharaoh's.

03:34PM 7 What she does testify, and this is the most important  
03:34PM 8 part of her testimony, is that she went and worked for  
03:34PM 9 No Limit for a year, it didn't matter that she was fired at  
03:34PM 10 Pharaoh's. It had nothing to do with it.

03:34PM 11 And I asked her, I asked A.G., are they different?

03:34PM 12 And do you know what her response was? Do you  
03:34PM 13 remember? Completely different. She volunteered that in  
03:34PM 14 response.

03:34PM 15 The government is trying to sell you a narrative that  
03:34PM 16 is totally inconsistent with the evidence. There is no way  
03:35PM 17 it's proof beyond a reasonable doubt to believe that there is  
03:35PM 18 a conspiracy between these two separate entities.

03:35PM 19 They showed text messages, and there's this one sort  
03:35PM 20 of -- there's an LOL on it, so I don't know what the context  
03:35PM 21 it is, but the comment by LaMont, who didn't testify at this  
03:35PM 22 trial, but there's the comment about she does anal, LOL.

03:35PM 23 Which is, you know, grotesque. But that is -- it's -- there's  
03:35PM 24 an LOL on there. There's clearly context that we're missing.

03:35PM 25 What we do have in terms of context before it is a

03:35PM 1 message that's not consistent with conspirators,

03:35PM 2 coconspirators, it's a message that you took one of my top

03:35PM 3 weekend girls.

03:35PM 4 The message before that is Peter Gerace upset that

03:35PM 5 this separate entity resulted in one of his employees being --

03:35PM 6 being taken away. And there's this -- this response from the

03:36PM 7 individual who did not testify here, that -- there was a joke

03:36PM 8 or maybe it's not, because maybe things were happening at

03:36PM 9 No Limit that was different than Pharaoh's. What you do see

03:36PM 10 if you look at that exhibit, and you have to look at it, is

03:36PM 11 they stopped talking after that. Peter Gerace goes a long

03:36PM 12 time without communicating with him again.

03:36PM 13 And the message before, you took one of my top

03:36PM 14 weekend girls, it's pretty clear that they're not

03:36PM 15 coconspirators. In some respects they're competitors. They

03:36PM 16 certainly don't act together.

03:36PM 17 They write text messages about LaMont, or about --

03:36PM 18 about LaMont sending -- saying, I'm gonna send a girl to

03:36PM 19 try -- a potential dancer over to you.

03:36PM 20 And if you go a little bit lower in the exhibit,

03:36PM 21 there is a message in evidence that I don't think was

03:36PM 22 highlighted during the trial, but where -- they might have

03:36PM 23 been, I honestly don't remember -- where they talk about her

03:37PM 24 coming in to try out. The words were "try out." It wasn't

03:37PM 25 she would automatically becomes an employee for Pharaoh's. It

03:37PM 1 was somebody who was consistent with the testimony that they  
03:37PM 2 would dance in multiple places, they'd dance in multiple  
03:37PM 3 clubs, they would move around different clubs, she was  
03:37PM 4 somebody who was interested in dancing for Pharaoh's, LaMont  
03:37PM 5 referred her over.

03:37PM 6 That is not a conspiracy. That is simply the nature  
03:37PM 7 of the industry, based on the testimony that you've heard.  
03:37PM 8 So, just -- let's just wipe out the stags parties. Complete  
03:37PM 9 nonsense.

03:37PM 10 The VIP Room is a little bit more complicated. Also  
03:37PM 11 nonsense, but more complicated, because you have multiple  
03:37PM 12 witnesses talking about it. So it gives you more pause.  
03:37PM 13 You've gotta think about what's -- the testimony you heard.

03:37PM 14 But here's the thing about that testimony. There  
03:37PM 15 are, there's -- there's a couple different things about it.  
03:38PM 16 One is, you heard from a couple of witnesses who had a  
03:38PM 17 financial benefit, who had charges, who had reasons to not  
03:38PM 18 trust their credibility on it. You had another witness that  
03:38PM 19 didn't have some of the same credibility issues, A.P., agree  
03:38PM 20 with Mr. Cooper -- it's hard to pronounce her last name, so  
03:38PM 21 we're going to continue to go with that. A.P. says didn't see  
03:38PM 22 any sex in the VIP Rooms, she says the bouncers were awesome  
03:38PM 23 when asked about it. She says they would interrupt if  
03:38PM 24 anything inappropriate was happening. And she wasn't the only  
03:38PM 25 one who said they witnessed bouncers coming in and

03:38PM 1 interrupting.

03:38PM 2 Some of the same witnesses who said, yeah,  
03:38PM 3 occasionally, a patron and one of the dancers would get away  
03:38PM 4 with a sex act, I've seen it happen before, would also say, I  
03:38PM 5 also saw times where it would get interrupted, where somebody  
03:38PM 6 was watching the screen, caught it, and intervened.

03:39PM 7 And the government's witness, Doug Augustyniak, was  
03:39PM 8 the only VIP attendant who testified, and he told you that's  
03:39PM 9 the reality. We watch the screen, we're doing multiple things  
03:39PM 10 at once, if we see it, we'll intervene. And he did.

03:39PM 11 And this isn't helpful to the defense. He wasn't  
03:39PM 12 trying to help us. He told in response, when we were saying  
03:39PM 13 well, and nobody -- nobody was trying to pay you off, he says,  
03:39PM 14 oh, yeah, some customers tried.

03:39PM 15 So, the government can say, oh, he -- he got up there  
03:39PM 16 and was trying to help out. No, he wasn't. He was trying to  
03:39PM 17 give the answers. Yeah, he may have a problem with the  
03:39PM 18 government, that doesn't mean that he was suddenly lying about  
03:39PM 19 everything that they don't want you to -- to -- to credit him  
03:39PM 20 for.

03:39PM 21 I asked him nobody -- nobody propositioned you, did  
03:39PM 22 they? He said, oh, yeah, yeah, some people did. Or he'd say  
03:39PM 23 no, he said, if it happened, it was between a customer and a  
03:39PM 24 dancer. It was not allowed.

03:39PM 25 And the last questions with Mr. Augustyniak, sorry,

03:40PM 1 just give me a second here.

03:40PM 2 I -- I'm so far off my outline. I may come back to  
03:40PM 3 it and actually read you the questions because I have them  
03:40PM 4 somewhere. But the short of it that you probably remember is  
03:40PM 5 at the end he acknowledges giving this testimony, the  
03:40PM 6 government -- in response to defense questions, the government  
03:40PM 7 seized on it a little bit on redirect asking questions about  
03:40PM 8 that.

03:40PM 9 And on recross asked, okay, customers tried to  
03:41PM 10 proposition you. That came from customers, not management,  
03:41PM 11 right?

03:41PM 12 Correct.

03:41PM 13 In fact, everything that was ever conveyed to you as  
03:41PM 14 a VIP attendant from management or from ownership was the  
03:41PM 15 opposite of that, right?

03:41PM 16 Yes.

03:41PM 17 It was not the case that ownership had anything to do  
03:41PM 18 with that. And you didn't hear any testimony throughout the  
03:41PM 19 trial at all that it did other than L.L.'s testimony. The one  
03:41PM 20 who was getting the car insurance paid, the one who changed  
03:41PM 21 her testimony between 25 and 500.

03:41PM 22 L.L. is also the one who said she slept with Peter  
03:41PM 23 Gerace's brother, David, somebody you really didn't hear any  
03:41PM 24 testimony was ever around the club, and then was shown a  
03:41PM 25 picture of David during her cross-examination and said I don't

03:41PM 1 recognize anybody in that picture.

03:41PM 2 During Brian Burns' cross, showed the same picture  
03:41PM 3 and he said, I think -- I believe that's David Gerace and  
03:41PM 4 Anthony Gerace. The redirect was well.

03:41PM 5 People change appearance over time. Okay. Well  
03:41PM 6 people do change appearance, but that was a lie. She didn't  
03:42PM 7 sleep with David Gerace. She didn't recognize -- she was  
03:42PM 8 shown a picture of him here on the stand, wasn't prepared for  
03:42PM 9 it, and she goes, I don't know who's in that picture.

03:42PM 10 L.L. is the only person who conveniently tells you  
03:42PM 11 the story of Peter Gerace says, oh, there's Wayne VanVleet, go  
03:42PM 12 over there, Brian will look the other way. A sort of  
03:42PM 13 perfectly tailored allegation to try to connect Peter to the  
03:42PM 14 VIP Room, something that all the other evidence does not  
03:42PM 15 support. It's not at all believable.

03:42PM 16 And you know what else isn't believable about it?

03:42PM 17 There really is no connection established between Wayne  
03:42PM 18 VanVleet and Peter Gerace. That's pretty much acknowledged on  
03:42PM 19 their closing statement.

03:42PM 20 They talk about the conspiracy. Yeah, they're  
03:42PM 21 coconspirators, they don't even know each other. Peter Gerace  
03:42PM 22 doesn't need to know Wayne VanVleet. They know the evidence  
03:42PM 23 doesn't support that.

03:42PM 24 When asked about the other phone contacts, is Wayne  
03:43PM 25 VanVleet in his phone? He has tons of contacts. He's a

03:43PM 1 business owner, he's got contacts all over the place, from the  
03:43PM 2 full spectrum of law enforcement, to people who have  
03:43PM 3 allegations against them, to people he grew up with. He has  
03:43PM 4 all of these contacts in his phone. And Wayne VanVleet, this  
03:43PM 5 guy who was supposedly at the club all the time and that  
03:43PM 6 L.L.'s testimony they have her say he was -- Peter Gerace's  
03:43PM 7 directing her to him, and he's not in Peter Gerace's phone.  
03:43PM 8 There's no communication between them, there's no pictures of  
03:43PM 9 them together, there's really no other testimony claiming that  
03:43PM 10 Peter Gerace even knows who he is.

03:43PM 11 I don't think you should believe for a minute let  
03:43PM 12 alone beyond a reasonable doubt that what was going on in the  
03:43PM 13 VIP Rooms was consistent with pervasive sex acts. If there  
03:43PM 14 were any, I think the evidence suggests it was an agreement  
03:44PM 15 between the dancer and a patron.

03:44PM 16 And a VIP attendant had six screens up in front of  
03:44PM 17 him, he's handling the money, he's handling chips, he's doing  
03:44PM 18 all these things at once, he's doing the best he can while  
03:44PM 19 also supposed to watch the cameras, and there's testimony that  
03:44PM 20 when he would catch something he would intervene. He didn't  
03:44PM 21 always catch it. That doesn't make the VIP attendant a  
03:44PM 22 criminal, and it doesn't make Peter Gerace a criminal. It  
03:44PM 23 just does not.

03:44PM 24 And if the VIP attendant was getting paid off to look  
03:44PM 25 the other way, that does not mean Peter Gerace knew about it.

03:44PM 1 Again, unless you believe L.L.'s testimony beyond a reasonable  
03:44PM 2 doubt, unless you wouldn't hesitate to rely on her in that  
03:44PM 3 regard.

03:44PM 4 The cameras don't support it. The cameras don't  
03:44PM 5 support -- went back seven weeks. The fact that Peter Gerace  
03:44PM 6 would make sure the cameras recorded the longest in the VIP  
03:44PM 7 area to avoid this type of thing, to make sure that if an  
03:45PM 8 allegation is made and directed to him, he has a means of  
03:45PM 9 going back and looking.

03:45PM 10 The fact that it exists is reasonable doubt. The  
03:45PM 11 fact that when they pulled this these cameras, there was no  
03:45PM 12 relevant information identified. Oh, there was fondling,  
03:45PM 13 there was touching of the breasts, there was kissing in some  
03:45PM 14 instances. Yeah, okay, it's still, not every sin is a crime,  
03:45PM 15 it's a lap dance.

03:45PM 16 The government had a chance to review that. They  
03:45PM 17 went through it. They saw the pants stain on the patrons,  
03:45PM 18 they didn't see sex acts. They saw no vaginal sex, no anal  
03:45PM 19 sex, no oral sex. Nothing of that sort.

03:45PM 20 Okay. The last area is the upstairs. And the  
03:45PM 21 testimony is -- comes from just -- there's a -- there's a  
03:46PM 22 number of witnesses who say they were upstairs and that they  
03:46PM 23 used drugs upstairs. Then there are a much, much more limited  
03:46PM 24 number of witnesses who claim to have observed or been  
03:46PM 25 involved in sex upstairs. You have to distinguish those two

03:46PM 1 things. Okay? Just because there's testimony about things  
03:46PM 2 happening upstairs involving cocaine usage, and that there's  
03:46PM 3 rumors about other things that would happen upstairs, that  
03:46PM 4 doesn't anchor the two together automatically.

03:46PM 5 You have to isolate who actually said that they  
03:46PM 6 observed sex acts.

03:46PM 7 Well, Katrina Nigro, again, says I would go up there  
03:46PM 8 and I would find used condoms and it's the smell, all this  
03:46PM 9 grotesque testimony that she gave you which, again, just --  
03:46PM 10 it's Katrina Nigro. It's not believable. And it's  
03:46PM 11 inconsistent with the fact that she couldn't go upstairs  
03:46PM 12 because she didn't have a key, something the government didn't  
03:46PM 13 ask her about.

03:46PM 14 G.R. If you go back and ask for a read-back of her  
03:47PM 15 cross, you will hear a couple of things of note. And keep in  
03:47PM 16 mind, G.R. is really, I mean, on cross, G.R., L.L., K.L., were  
03:47PM 17 I think the three that -- unless I missed somebody, I think  
03:47PM 18 those were the three that were just referenced by the  
03:47PM 19 government in their closing statement, at least three of the  
03:47PM 20 main ones that they argued about.

03:47PM 21 We already talked about K.L. earlier. K.L. was lying  
03:47PM 22 to you about a number of things, and it came out that the way  
03:47PM 23 they described this interaction is inconsistent with the  
03:47PM 24 details that were kept away from you during the direct  
03:47PM 25 examination. So, let's set K.L. aside.

03:47PM 1                   L.L., we talked about. The type of payments she was  
03:47PM 2 receiving, just like K.L. She was getting all kinds of  
03:47PM 3 financial expenses to help secure her testimony. Just like  
03:48PM 4 other witnesses with credibility issues, she changed her  
03:48PM 5 answers significantly. She's the one that we just talked  
03:48PM 6 about that said she was sleeping with Peter Gerace's brother  
03:48PM 7 and was shown a picture, isn't able to identify who she's  
03:48PM 8 looking at.

03:48PM 9                   L.L. is also one of the three girls who tried out  
03:48PM 10 together. A.A. -- my arrows, as we know from earlier in the  
03:48PM 11 trial, are terrible. R.W. And there's L.L.

03:48PM 12                   Now, why does that matter? Because L.L. -- all three  
03:48PM 13 of them testify. A.A. testified earlier in the trial. It may  
03:48PM 14 not have been immediately obvious because the government  
03:48PM 15 didn't call them back to back. They called A.A. and R.W.  
03:48PM 16 earlier on, and then they waited until the end to call L.L.

03:48PM 17                   But if you go back and think about A.A.'s testimony,  
03:49PM 18 you'll remember -- and you can get this from a read-back --  
03:49PM 19 she doesn't know who Peter Gerace is. She never met him  
03:49PM 20 before. She's never even been upstairs.

03:49PM 21                   L.L. talked about having threesomes with A.A. and  
03:49PM 22 Peter Gerace, just like the David Gerace thing, it's just  
03:49PM 23 absolutely bogus.

03:49PM 24                   These are both government witnesses. They talk about  
03:49PM 25 we called all these witnesses. They contradict each other.

03:49PM 1 Again, I'm not saying that you should believe A.A. instead of  
03:49PM 2 L.L., I'm saying you shouldn't believe either of them.  
03:49PM 3 Because the test is whether you would hesitate, whether you  
03:49PM 4 would have reasonable doubt, whether you can't rely on them.  
03:49PM 5 If there's inconsistencies, neither of them are somebody you  
03:49PM 6 can rely on. You would at least hesitate to think that either  
03:49PM 7 of these people are reliable.

03:49PM 8 I mean, clearly, A.A. came in and gave testimony that  
03:49PM 9 the government wanted. She wasn't here to help Peter Gerace.  
03:49PM 10 She didn't know who he was. She's never been upstairs.

03:49PM 11 That's just -- that's just the testimony she gave under oath.

03:50PM 12 L.L., who changed her story multiple times, happens  
03:50PM 13 to be the one who says oh, L.L., L.L. knows. Not only knows  
03:50PM 14 Peter Gerace, we were having threesomes with him. Just  
03:50PM 15 outrageous.

03:50PM 16 They didn't address any of this in their closing  
03:50PM 17 argument. They just told you they cited examples from these  
03:50PM 18 witnesses as if they're gospel. This is so far from that.

03:50PM 19 Now, going back to G.R., there's two main points I  
03:50PM 20 want to get across. I understand that it's a dicey area to  
03:50PM 21 talk about choice in regards to the dancers, especially if  
03:50PM 22 they were using drugs. I understand that gets complicated. I  
03:50PM 23 understand the government wants to seize on that. Well, they  
03:50PM 24 didn't have any choice.

03:50PM 25 That's not what G.R. told you.

03:50PM 1           In cross, she said it was her choice. These were her  
03:51PM 2 choices.

03:51PM 3           She didn't tell you I was being coerced. She said I  
03:51PM 4 was making these decisions myself. And coercion is part of  
03:51PM 5 this crime.

03:51PM 6           The government can tell you, well, we think it's  
03:51PM 7 coercion even if the witness doesn't, so you should find it's  
03:51PM 8 coercion.

03:51PM 9           G.R. was capable of making the choice herself, she  
03:51PM 10 told you that she was, even if she was using drugs. She  
03:51PM 11 didn't say she was coerced. Okay? That's her testimony.

03:51PM 12           She also told you, and this is worth noting, that  
03:51PM 13 Mr. -- Peter Gerace said to her, before she had sex with this  
03:51PM 14 individual based on her testimony, is take care of my friend  
03:51PM 15 and he gives her \$200.

03:51PM 16           Now, I want to focus on the last part of that, the  
03:51PM 17 monetary amount he gave her. They're saying \$200, that's  
03:51PM 18 consistent with I guess propositioning her for sex.

03:52PM 19           This is a strip club. Her job, by profession, is  
03:52PM 20 dancing. And you heard the \$200 is pretty much consistent  
03:52PM 21 with a longer dance in the VIP area.

03:52PM 22           She didn't say he told me to have sex with him. The  
03:52PM 23 government can get up here on rebuttal and yell there's no  
03:52PM 24 other interpretation of that, but that's not the case at all.  
03:52PM 25 That's not the case at all. You are in a strip club, \$200 is

03:52PM 1 consistent with a longer dance, not to go back and have sex.

03:52PM 2 They want you to find beyond a reasonable doubt that

03:52PM 3 that's an example of Peter eliciting a commercial sex act.

03:52PM 4 It's one of the only examples that have been given. There's

03:52PM 5 reasonable doubt there. Even if there wasn't the issue of the

03:52PM 6 timeframe, even if the evidence didn't support that this

03:52PM 7 conspiracy does not -- there's no way for it to go, the

03:53PM 8 timeframe that -- that has been alleged here. There's

03:53PM 9 reasonable doubt all day long.

03:53PM 10 Judge, I know I'm probably going a little later than

03:53PM 11 I said. Do you know how much time I have left?

03:53PM 12 **THE COURT:** You've got -- hang on -- over an hour.

03:53PM 13 **MR. FOTI:** Okay. Thank you, I won't use it, I

03:53PM 14 promise.

03:53PM 15 All right. The last sort of bucket of charges that

03:53PM 16 were discussed is the November 2019 charges. Okay? And

03:54PM 17 they're on here. We have three witnesses listed as being

03:54PM 18 relevant to that charge: P.H., Ben Rivera, C.C.

03:54PM 19 Ben Rivera is somebody you would definitely hesitate

03:54PM 20 to trust. He's somebody that has all kinds of reasons to

03:54PM 21 doubt their testimony. The instructions are going to be

03:54PM 22 consistent with the fact that you should take great care in

03:54PM 23 deciding whether to assess him as credible. And, certainly,

03:54PM 24 the instructions on the proof beyond a reasonable doubt is

03:54PM 25 combined with the presumption of innocence all move you

03:54PM 1 towards the conclusion that Ben Rivera is a hired gun.

03:54PM 2 He talks about an incident that was written about in  
03:54PM 3 the newspaper. The government's best argument against that  
03:54PM 4 is, well, in the newspaper article, they didn't talk about the  
03:54PM 5 gender. So what?

03:54PM 6 You mean that he couldn't learn the gender through

03:54PM 7 talking in the jail? He couldn't have learned it through

03:54PM 8 questions by the government during the course of his

03:54PM 9 debriefing? That's it, the gender? Is why you should believe

03:55PM 10 him? When he tells the government conveniently I have

03:55PM 11 information about something that was in the paper?

03:55PM 12 Ben Rivera's testimony is also inconsistent with the

03:55PM 13 only witness we have to this. And the government can say,

03:55PM 14 well, there's three witnesses, or there's two other witnesses.

03:55PM 15 There's P.H.

03:55PM 16 P.H. is on the receiving end. What she knows is she

03:55PM 17 got a message from C.C.'s account, which was apparently

03:55PM 18 drafted by Crystal Quinn. And she responds the next morning

03:55PM 19 not at all appearing concerned.

03:55PM 20 And I know the government can get up and say, well,

03:55PM 21 you heard her testimony, she was very concerned.

03:55PM 22 You heard what happened with Jessica Leyland, she had

03:55PM 23 every reason to be scared.

03:55PM 24 The response doesn't indicate that at all. She does

03:55PM 25 respond, she didn't have to respond. She responds, stay off

03:55PM 1 the coke ladies, LOL, or something along those lines.

03:55PM 2 She wasn't there. She can't testify to what  
03:55PM 3 happened.

03:56PM 4 Who's our witness there? It's C.C.

03:56PM 5 C.C. does not establish that any witness tampering,  
03:56PM 6 anything that was written during that message was done at the

03:56PM 7 behest of Peter Gerace. She gave you specific answers to

03:56PM 8 questions that all cut against that conclusion. And we're

03:56PM 9 talking about Counts 6 through 8. They're all of the same

03:56PM 10 charge, just sort of different variations of it.

03:56PM 11 C.C. was asked these questions by Mr. Soehnlein:

03:56PM 12 "You were still in the basement when Crystal had your  
03:56PM 13 phone, correct?

03:56PM 14 "Answer: Yes.

03:56PM 15 "And for the entire time that she had your phone,  
03:56PM 16 correct?

03:56PM 17 "Answer: Yes.

03:56PM 18 "Okay. You didn't know what Crystal was saying --

03:56PM 19 strike that. You didn't know what Crystal was typing on her  
03:57PM 20 phone when she had it in her hand, correct?

03:57PM 21 "Nope.

03:57PM 22 "Okay. She didn't read it out loud?

03:57PM 23 "No.

03:57PM 24 "She didn't pass the phone around before sending it?

03:57PM 25 "No.

1           "She didn't hand the phone to Peter before she sent  
2 it?

3           "No.

4           "You're sure about that?

5           "Yes.

6           "You didn't take the phone at any point that night  
7 and review the messages?

8           "No.

9           "You didn't take the phone and send any messages,  
10 correct?

11          "No.

12          "You never saw Peter Gerace look at phone that night?

13          "No."

14          There's no testimony Peter Gerace directed it. They  
15 have this -- sort of this weird testimony where they try to  
16 get you to jump to a particular conclusion that they were --  
17 that Peter Gerace was complaining about that he thought --  
18 that he thought that P.H. was -- was cooperating or whatever.

19          And then Crystal Quinn, the testimony is Crystal  
20 Quinn takes not Peter Gerace's phone, she takes C.C.'s phone,  
21 and she sends these messages.

22          And these messages, even though they refer to snitch  
23 at some point, and they refer to "ray," which the government  
24 has said is "rat," and maybe it is, even though you also heard  
25 later on that P.H.'s other name is P.R., whatever it is,

03:58PM 1 there's a ton of stuff in there. It's not about you better  
03:58PM 2 not testify. It's not a threat about, you know, someone's  
03:58PM 3 gonna come to you if you -- if you testify. It's not about  
03:58PM 4 that.

03:58PM 5 There is something personal is written all over that.  
03:58PM 6 Personal between Crystal Quinn, if she's the one who's writing  
03:58PM 7 the messages, and P.H. The fact that she didn't like her  
03:58PM 8 because she's also a snitch, that may have been part of it.  
03:58PM 9 But it's not tampering. And if it was tampering, Peter Gerace  
03:58PM 10 certainly was not involved. Just because he was present does  
03:58PM 11 not make him criminally liable.

03:58PM 12 You specifically heard the testimony Crystal Quinn,  
03:58PM 13 according to C.C., was acting on her own when she was writing  
03:59PM 14 that message out. She wasn't asking for feedback. She wasn't  
03:59PM 15 reading it to anybody. She wasn't handing it around. And you  
03:59PM 16 didn't hear any other testimony that suggests that she ever  
03:59PM 17 did it at Peter Gerace's request, other than pure insinuation  
03:59PM 18 and conjecture. And that's not proof beyond a reasonable  
03:59PM 19 doubt.

03:59PM 20 I just need a moment.

04:00PM 21 I -- I hate to take us backwards, but, oh, maybe I  
04:00PM 22 won't, I think I just might have closed out. Okay.

04:00PM 23 I hate to take us backward, but it's something I did  
04:00PM 24 want to read you, part of Doug Augustyniak's testimony and now  
04:00PM 25 I have it. So my cocounsel is a little bit better organized

04:00PM 1 than I am.

04:01PM 2 After -- after -- on cross-examination, Doug  
04:01PM 3 Augustyniak revealed, yeah, patrons would try to proposition  
04:01PM 4 the VIP attendants. And after the government tried to ask  
04:01PM 5 some questions on that to sort of seize upon it, on redirect I  
04:01PM 6 asked to clarify what matters to you as jurors in this trial  
04:01PM 7 with Mr. Gerace.

04:01PM 8 "Now you were asked about the VIP attendant, and you  
04:01PM 9 were asked about being asked by patrons to look the other way  
04:01PM 10 correct?

04:01PM 11 "Correct.

04:01PM 12 "Okay. That was a question posed to you or a request  
04:01PM 13 to you by patrons correct?

04:01PM 14 "Correct.

04:01PM 15 "It didn't come from other staff members, correct?

04:01PM 16 "No.

04:01PM 17 "It didn't come from Mr. Gerace, correct?

04:01PM 18 "No.

04:01PM 19 "At no time during your tenure did Mr. Gerace tell  
04:01PM 20 you, I want you to look the other way during VIP dances?

04:01PM 21 "Never has.

04:01PM 22 "Everything that was conveyed to you was the opposite  
04:02PM 23 of that in terms of VIP, correct?

04:02PM 24 "That's correct.

04:02PM 25 "You always were supposed to do everything you could

04:02PM 1 to intervene on sex acts in the VIP area?

04:02PM 2 "Yes.

04:02PM 3 "So the question about patrons asking you, that's  
04:02PM 4 completely separate from Mr. Gerace, correct?

04:02PM 5 "Correct.

04:02PM 6 "Mr. Gerace never gave you a tip to look the other  
04:02PM 7 way, correct?

04:02PM 8 "Never. He never tipped us."

04:02PM 9 Which maybe is a reason why he would have an issue  
04:02PM 10 with Mr. Gerace besides no longer working there, but it's --  
04:02PM 11 it's relevant because the government earlier on in the trial  
04:02PM 12 really seemed to be trying to advance a theory, and they were  
04:02PM 13 asking questions of the idea that more money was made by the  
04:02PM 14 club if tips were given to staff. And it was something that  
04:02PM 15 they were kind of, I think, sort of exploring earlier on in  
04:02PM 16 some of the testimony, which obviously isn't -- isn't at all  
04:02PM 17 consistent with reality.

04:02PM 18 "Mr. Gerace never gave you a tip to look the other  
04:02PM 19 way, correct?

04:02PM 20 "Never. He never tipped us.

04:02PM 21 "He never asked you to do something like that,  
04:02PM 22 correct?

04:02PM 23 "No.

04:02PM 24 "When the VIP attendant would receive a tip from the  
04:03PM 25 dancers, there was no payment -- this is where it matters --

04:03PM 1 there was no payment from the tip towards the club, correct?

04:03PM 2 "Correct.

04:03PM 3 So that was a tip that the VIP attendant, the DJ, and  
04:03PM 4 those staff members took home with them, correct? That didn't  
04:03PM 5 go back to the business, correct?

04:03PM 6 "No.

04:03PM 7 "And it didn't go to Mr. Gerace, correct?

04:03PM 8 "No."

04:03PM 9 All right. Now, in a few moments I'm going to finish  
04:03PM 10 up. The government is gonna get another chance to talk to you  
04:03PM 11 and we do not. Okay? So this is the point where, as the  
04:03PM 12 defense, we turn it over to you.

04:03PM 13 The government's gonna get up and make arguments, and  
04:03PM 14 you know that there's things that we would have a response  
04:03PM 15 for, but we don't get to give them.

04:04PM 16 This is where we ask you to do the critical thinking  
04:04PM 17 that you signed up for. This is where we ask you to hold the  
04:04PM 18 government accountable. This is where we ask you to push back  
04:04PM 19 against government overreach.

04:04PM 20 When I sit down, that's the last time we get to  
04:04PM 21 present any argument we thought of, but it's not the last time  
04:04PM 22 that you get to think of what the arguments are in response to  
04:04PM 23 what's being said to you.

04:04PM 24 All the government resources that were poured into  
04:04PM 25 this case, all of them, and what they presented to you were

04:04PM 1 half-truths, inconsistent testimony, witnesses who were paid  
04:04PM 2 off, witnesses who were inconsistent, who had lied under oath  
04:04PM 3 other times, who lied to you on the stand in this trial, some  
04:04PM 4 of them who were totally indifferent about that.

04:05PM 5 This is the point where you deliberate, you can push  
04:05PM 6 back against that. When you consider the burden of proof, the  
04:05PM 7 government did not meet that burden. Because the quality of  
04:05PM 8 the evidence that they presented and the lack of evidence, you  
04:05PM 9 are to acquit.

04:05PM 10 Colleen, I want to try to do this.

04:05PM 11 **THE CLERK:** Pull it towards you.

04:05PM 12 **MR. FOTI:** Pull it towards me? Oh, this is -- I  
04:05PM 13 probably just broke it.

04:05PM 14 Colleen takes care of all of us.

04:05PM 15 **THE CLERK:** Okay.

04:05PM 16 **MR. FOTI:** Yep. Thank you, Colleen.

04:05PM 17 **THE CLERK:** And then, okay, this is your zoom-in and  
04:05PM 18 zoom-out up here, okay?

04:05PM 19 **MR. FOTI:** Okay.

04:05PM 20 **THE CLERK:** Got it?

04:05PM 21 **MR. FOTI:** Thank you.

04:05PM 22 **THE CLERK:** You're welcome.

04:06PM 23 **MR. FOTI:** This is the jury verdict form. Tomorrow  
04:06PM 24 you are going to receive instructions about the law from the  
04:06PM 25 judge, and then Monday you're going to start your

04:06PM 1 deliberation. It's not ideal to be starting it right before  
04:06PM 2 Christmas, but this -- you folks and the government I know is  
04:06PM 3 going to agree this, the Court, I believe everybody in this  
04:06PM 4 courtroom will agree, you have been some of the most  
04:06PM 5 attentive, focused jurors that anybody could hope for. And  
04:06PM 6 despite the holidays, you've all stuck with us. Everybody  
04:06PM 7 here appreciates that.

04:06PM 8 What's next is the instructions from the judge.  
04:06PM 9 Monday, you are going to start the deliberation process. You  
04:06PM 10 are going to listen to each other, and if you have hesitations  
04:07PM 11 or reasonable doubts, you're going to express that to each  
04:07PM 12 other. Some of them might be agreement with things that we  
04:07PM 13 said today. Some of them, as I mentioned earlier, might be  
04:07PM 14 things that we didn't think of or at least didn't talk about  
04:07PM 15 during the closing argument.

04:07PM 16 You'll listen to each other, and if you agree that  
04:07PM 17 it's reasonable to have a doubt under those circumstances, if  
04:07PM 18 it's a reasonable doubt, then you have to acquit to any count  
04:07PM 19 where there's an element where reasonable doubt exists.

04:07PM 20 And, again, the instructions are going to essentially  
04:07PM 21 suggest that if you think a reasonable person would have that  
04:07PM 22 hesitation or doubt, even though maybe you, yourself really  
04:07PM 23 don't think you have it, if your fellow juror expresses  
04:07PM 24 something and you think about it and say, well, it's  
04:07PM 25 reasonable for them to feel that way, that's reasonable doubt,

04:07PM 1 you have to acquit.

04:07PM 2 When you get to the point in your deliberation where  
04:07PM 3 you make a determination on whether there is reasonable doubt  
04:08PM 4 as to any element of the charge, the verdict only supports --  
04:08PM 5 the evidence and lack of evidence only supports one verdict,  
04:08PM 6 and that is a verdict of not guilty.

04:08PM 7 When we get to Count 2, paying a bribe to a public  
04:08PM 8 official, when you consider the lack of evidence and the  
04:08PM 9 problems with the evidence here, there's only one verdict that  
04:08PM 10 the evidence supports, and that is a verdict of not guilty.

04:08PM 11 When you get to Count 3, maintaining a drug premises,  
04:08PM 12 and you listen to those charges, and you hear the way it was  
04:08PM 13 charged is -- is an allegation that it continued over such a  
04:08PM 14 span of time, even if there wasn't all this reasonable doubt  
04:08PM 15 based on lack of evidence, there's no way it was proven based  
04:08PM 16 on you what heard, the verdict is not guilty.

04:08PM 17 When you get to Count 4, conspiracy to distribute a  
04:09PM 18 controlled substance, and all the reasons we talked about why  
04:09PM 19 there's reasonable doubt, when you think about the issues with  
04:09PM 20 the timeframe, when you think about the issues with the  
04:09PM 21 witnesses, when you think about all the evidence you did not  
04:09PM 22 hear, the verdict is not guilty.

04:09PM 23 When we get to Count 5, conspiracy to commit sex  
04:09PM 24 trafficking, and you think about the inconsistencies between  
04:09PM 25 the government's own witnesses, when you think how they tried

04:09PM 1 to throw the kitchen sink at you, they tried to tell you,  
04:09PM 2 yeah, just any of these buckets and each one came up short,  
04:09PM 3 there's only one verdict that's supported by the lack of  
04:09PM 4 evidence here, and that is not guilty.

04:09PM 5 When we get to Count 6 -- Count 6, Count 7, Count 8,  
04:09PM 6 all tampering with a witness, all the same allegation, all  
04:09PM 7 completely inconsistent with the evidence that you have. And  
04:10PM 8 when you evaluate that charge, it is not guilty, not guilty,  
04:10PM 9 and not guilty.

04:10PM 10 Finally, I'll leave that one to you.

04:10PM 11 Do you believe C.C. that Peter Gerace is the one who  
04:10PM 12 brought drugs there and he possessed it with intent to  
04:10PM 13 distribute, there is not a conspiracy element. There is not a  
04:10PM 14 timeframe that extends over a period of time where Mr. Peter  
04:10PM 15 Gerace was not in the club. If you believe that beyond a  
04:10PM 16 reasonable doubt, then you may make a verdict of guilty here.

04:10PM 17 But I would suggest, the burden being a high one, and  
04:10PM 18 the possibility that somebody else was responsible for  
04:10PM 19 bringing the cocaine is enough to acquit as to this, that on  
04:11PM 20 this one, as well, the verdict is not guilty.

04:11PM 21 You'll make that determination after you have an  
04:11PM 22 opportunity to evaluate all the evidence.

04:11PM 23 Members of the jury, I've been proud to be a part of  
04:11PM 24 this trial and to stand in front of you to represent Peter  
04:11PM 25 Gerace. I appreciate you listening throughout the entirety of

04:11PM 1 this.

04:11PM 2 Like I said, I won't get another opportunity to talk  
04:11PM 3 to you, Eric Soehnlein doesn't get up to talk to you, but we  
04:11PM 4 trust that you're going to do your job at this point. We  
04:11PM 5 trust that you're going to hold the government accountable,  
04:11PM 6 and you are going to choose to push back against the  
04:11PM 7 government overreach in this case.

04:11PM 8 Thank you.

04:11PM 9 **THE COURT:** Okay. We're going to take another break  
04:11PM 10 now. Before we do that, though, I want to say something about  
04:11PM 11 the objection that Mr. Tripi made that I overruled.

04:11PM 12 I overruled that objection not because I disagree  
04:11PM 13 with what Mr. Tripi was saying. Mr. Tripi said that Mr. Foti  
04:12PM 14 had made a misstatement of the law.

04:12PM 15 The reason I overruled the objection is because what  
04:12PM 16 lawyers say to you is simply argument. What they say to you  
04:12PM 17 about the facts is not evidence, and you're not to accept what  
04:12PM 18 they say simply because they said it.

04:12PM 19 What they say to you about the law is not what the  
04:12PM 20 law is. I'm going to tell you what the law is tomorrow. So,  
04:12PM 21 that's why I overruled the objection.

04:12PM 22 The lawyers can make whatever arguments they want to  
04:12PM 23 make to you about the facts and about the law. You can accept  
04:12PM 24 those arguments, you can reject those arguments. What they  
04:12PM 25 say is not evidence, and what they say is not the law. Okay?

04:12PM 1 So that's why I overruled that objection.

04:12PM 2 We're going to break for about ten minutes. Let's  
04:12PM 3 come back at 4:25. Come back at 4:25 to finish up. Okay?

04:12PM 4 Remember my instructions. Don't talk about the case  
04:12PM 5 even with each other, don't make up your minds, folks. Not  
04:12PM 6 just yet.

04:12PM 7 (Jury excused at 4:12 p.m.)

04:13PM 8 **THE COURT:** Anything before we break?

04:13PM 9 **MR. COOPER:** Just, I want to say I appreciate the  
04:13PM 10 explanation of the overruled objection. I think it cleared up  
04:13PM 11 that the Court wasn't disagreeing with the objection.

04:13PM 12 **THE COURT:** Yep.

04:13PM 13 **MR. TRIPI:** And I did my best not to object --

04:13PM 14 **THE COURT:** No, no, I know you did, Mr. Tripi. I --  
04:13PM 15 I -- I -- I know you did. I know you did. And you know that  
04:13PM 16 I give very wide latitude in summation for that very reason,  
04:13PM 17 because I'm going to, you know, I instructed the jury then  
04:13PM 18 and -- and I will instruct the jury again that what I say is  
04:13PM 19 the law, not what you say and not what the defense says.

04:13PM 20 So I just -- I think it's -- it bears reinforcing  
04:14PM 21 when there's an objection made, that's all.

04:14PM 22 **MR. TRIPI:** Thank you.

04:14PM 23 **THE COURT:** Okay. Anything from the defense before  
04:14PM 24 we break?

25

04:14PM 1           **MR. FOTI:** No.

04:14PM 2           **MR. SOEHNLEIN:** No, thank you.

04:14PM 3           **THE COURT:** Okay. You've got 32 minutes, and I'm

04:14PM 4 gonna hold you to it. I'm gonna -- the gong is going at 32.

04:14PM 5           **MR. TRIPI:** You didn't have to pull the cane on any

04:14PM 6 of the trial, I get it.

04:14PM 7           **THE COURT:** Okay. I just want you to understand.

04:14PM 8 Okay.

04:14PM 9           **THE CLERK:** All rise.

04:24PM 10           (Back on the record at 4:24 p.m.)

04:24PM 11           (Jury not present.)

04:24PM 12           **THE CLERK:** We are back on the record for the

04:24PM 13 continuation of the jury trial in case numbers 19-CR-27 and

04:25PM 14 23-CR-37, United States of America versus Peter Gerace Jr.

04:25PM 15 All counsel and parties are present.

04:25PM 16           **THE COURT:** Okay. Anything that we need to do before

04:25PM 17 we bring the jury back?

04:25PM 18           **MR. TRIPI:** No, Your Honor.

04:25PM 19           **MR. SOEHNLEIN:** No, Your Honor.

04:25PM 20           **THE COURT:** Okay. At the very end, once we're done,

04:25PM 21 I want to talk about the jury charge. I've made some

04:25PM 22 decisions on those final -- or, at least some tentative

04:25PM 23 decisions. We'll have a little more, perhaps, argument

04:25PM 24 tomorrow morning, but I want to -- I want to just give you my

04:25PM 25 thoughts this evening because I know Mr. Soehnlein's not going

04:25PM 1 to be here tomorrow, and I want him to have the opportunity to  
04:25PM 2 weigh in through Mr. Foti. So I think it's only fair to give  
04:25PM 3 you an idea of where I'm coming from on those three charges.

04:25PM 4               Okay. Once Pat -- do you know how to get ahold of  
04:27PM 5 Pat? Can you?

04:27PM 6               (Jury seated at 4:27 p.m.)

04:27PM 7               **THE COURT:** The record will reflect that all our  
04:27PM 8 jurors, again, are present.

04:27PM 9               Mr. Tripi, you may begin.

04:27PM 10              **MR. TRIPPI:** Thank you. We're almost there.

04:27PM 11               Now is just about the time for you to use your good  
04:27PM 12 judgment, your common sense, and your life experience to  
04:27PM 13 determine what happened here. But by now, you know what  
04:27PM 14 happened here.

04:27PM 15               And you also know that when you dance between the  
04:27PM 16 rain drops, you get wet.

04:28PM 17               Through six weeks, 45 or so witnesses, over 150  
04:28PM 18 exhibits in evidence, this defendant right here is soaked in  
04:28PM 19 guilt.

04:28PM 20               This is not a kitchen-ink approach. There's a ton of  
04:28PM 21 evidence. That's the difference.

04:28PM 22               And the defendant's no hero or sitting here for two  
04:28PM 23 months, listening to victim after victim whose life he helped  
04:28PM 24 ruin through his club, through the path to hell that he sent  
04:28PM 25 them down. Making money off of their bodies, their trauma,

04:28PM 1 and the bank that he called his VIP Room.

04:28PM 2 Now, sure, he doesn't like the facts, the facts that  
04:29PM 3 you learned about in this trial, so he attacked the messengers  
04:29PM 4 of the facts. The messengers who brought the evidence to  
04:29PM 5 court. And that's okay.

04:29PM 6 But the government's not on trial here, the defendant  
04:29PM 7 is. This is his trial. This is about what he did. These are  
04:29PM 8 about his choices. And it's up to you to decide the facts,  
04:29PM 9 and those facts prove him guilty.

04:29PM 10 But the defendant would have you believe in some sort  
04:29PM 11 of upside-down world that the agents who investigated his  
04:29PM 12 crimes, who exposed Bongiovanni's corrupt relationship with  
04:29PM 13 him, who exposed his corrupt connections to a New York State  
04:29PM 14 Supreme Court judge, who exposed through the evidence they  
04:29PM 15 brought into this courtroom his connections to the Outlaws  
04:29PM 16 Motorcycle Club, who provided witnesses who testified about  
04:29PM 17 threats of coercion and fear, and his connections or reputed  
04:30PM 18 connections to Italian Organized Crime through his family.  
04:30PM 19 Somehow, that's the government's fault? No.

04:30PM 20 These are about his choices, what he did to real  
04:30PM 21 people who sat there and told you about it, embarrassed,  
04:30PM 22 embarrassed by what they had to talk about.

04:30PM 23 So, you didn't hear much. You didn't hear much about  
04:30PM 24 the facts and the actual testimony from witnesses in this  
04:30PM 25 trial and the actual exhibits in the courtroom. We'll go

04:30PM 1 through some of it.

04:30PM 2 You didn't hear much about specific testimony about  
04:30PM 3 what happened at Pharaoh's. You heard cherry-picked portions?

04:30PM 4 You heard cherry picked? Cherry-picked sentences of  
04:30PM 5 cross-examination.

04:30PM 6 Think back to the direct exam, when people are able

04:30PM 7 to speak freely in terms of open-ended questions, where they

04:31PM 8 say what happened. Compare that when you're thinking about

04:31PM 9 what was cherry picked here.

04:31PM 10 You didn't hear much about the actual threats made to

04:31PM 11 P.H.? When Mr. Cooper was reading them, you knew it was

04:31PM 12 coming from Peter because that's whose name Crystal referenced

04:31PM 13 in connection with calling her a narc and a rat.

04:31PM 14 And C.C., C.C. told you he sat feet away while it

04:31PM 15 happened. Of course, he got buyer's remorse later.

04:31PM 16 So let's get back to reality, the facts that you know

04:31PM 17 happened based on the evidence.

04:31PM 18 Facts? Joe Bongiovanni and this defendant have been

04:31PM 19 friends for 36 years, his text message. That's back to 1982.

04:31PM 20 Joe Bongiovanni became a DEA agent here in 2003. He

04:31PM 21 started funneling information to this defendant in 2005.

04:32PM 22 Is there any surprise with that type of powerful

04:32PM 23 insider working against people like this who investigate cases

04:32PM 24 from the inside that he never got caught?

04:32PM 25 And then double tap that with a corrupt New York

04:32PM 1 State judge, who happens to be the judge on a protective order  
04:32PM 2 when the State police are trying to make drug buys in  
04:32PM 3 Pharaoh's. Are any of you shocked that no actual drugs got  
04:32PM 4 found?

04:32PM 5 But you have witnesses. And those witnesses have  
04:32PM 6 eyeballs, and brains, and ears, and they came here and told  
04:32PM 7 you about it.

04:32PM 8 You want to talk about the drug evidence that wasn't  
04:32PM 9 seized? His corruption relationships are the starting point  
04:32PM 10 for that discussion. And those corrupt relationships, the  
04:32PM 11 corrupt relationship with Joseph Bongiovanni, are why he's  
04:32PM 12 guilty of Counts 1 and 2.

04:33PM 13 And, you know, there was a lot of talk about, you  
04:33PM 14 know, the government this, and the government that, and you  
04:33PM 15 only heard testimony. The judge is going to instruct you on  
04:33PM 16 the law. He's going to tell you testimony is evidence, just  
04:33PM 17 like Mr. Cooper did. Just like Mr. Cooper did. Because if  
04:33PM 18 testimony's not evidence, if testimony is not evidence, then  
04:33PM 19 think of this hypothetical: That any person walking down the  
04:33PM 20 street alone who gets robbed is a victim of a crime, that by  
04:33PM 21 definition can never be solved? That's a ridiculous notion.  
04:33PM 22 And that's not the law that this judge is going to give to  
04:33PM 23 you.

04:33PM 24 So now, getting back to facts that were presented to  
04:33PM 25 you during trial, back during opening statements I told you

04:33PM 1 that the defendant picked the most vulnerable women because he  
04:33PM 2 could control them. So he could make enough money through  
04:33PM 3 their exploitation in the downstairs VIP Room, the place he  
04:34PM 4 called the bank. And so he could use them as his own sexual  
04:34PM 5 playthings for himself and his prominent friends before  
04:34PM 6 discarding them for a new model.

04:34PM 7 They were all the same to him. Just like they were  
04:34PM 8 the same to Doug: Disposable, replaceable, run them into the  
04:34PM 9 ground until they're broken, only to be replaced by new  
04:34PM 10 favorites.

04:34PM 11 He also picked them because he believed their  
04:34PM 12 vulnerabilities were an insurance policy from this day coming.  
04:34PM 13 As I said in the beginning, their vulnerability, their  
04:34PM 14 addictions, their frailty were part of the business model.  
04:34PM 15 Part of the reason he controlled them through their  
04:34PM 16 addictions, so if this day came where his conduct came to  
04:34PM 17 light, he'd use it against them.

04:34PM 18 He'd use their addictions, their frailties, ones that  
04:34PM 19 he enhanced or started, against them as an insurance policy to  
04:35PM 20 discredit them so you wouldn't believe them.

04:35PM 21 And that's the defense argument, the one he had in  
04:35PM 22 his mind way back when he was doing it, that's the argument  
04:35PM 23 you just heard. Blame the victims. Don't look over there.  
04:35PM 24 Don't look at the defendant. Don't scrutinize his conduct.  
04:35PM 25 Blame the victims.

04:35PM 1 As you know by now, each of them were vulnerable in  
04:35PM 2 their own ways. All of them became addicted to drugs or those  
04:35PM 3 addictions worsened exponentially through the drugs either the  
04:35PM 4 defendant fed them or others did at Pharaoh's.

04:35PM 5 By now, the evidence has shown you that he  
04:35PM 6 underestimated them. It has shown you through each of their  
04:35PM 7 unique yet similar experiences at Pharaoh's over years, 2009  
04:35PM 8 it's happening to K.L. and G.R., 2018 it's happening to L.L.,  
04:36PM 9 and at times in between. How he exploited those addictions to  
04:36PM 10 get them to behave in ways they're not proud of because he  
04:36PM 11 wanted that protection from this day.

04:36PM 12 But in a few moments when you start to deliberate,  
04:36PM 13 and really listen to what they said, it'll bind him to  
04:36PM 14 justice.

04:36PM 15 When you apply your good judgment, your common sense  
04:36PM 16 to what you saw play out in this courtroom, it'll prove his  
04:36PM 17 guilt beyond a reasonable doubt of every one of those counts  
04:36PM 18 that Mr. Foti just went and checked boxes on.

04:36PM 19 Speaking of that, you just heard a lengthy summation  
04:36PM 20 by a skilled advocate for the defendant. But that's not  
04:36PM 21 evidence. You are the sole arbiters of the facts. And the  
04:36PM 22 facts came from the dozens of witnesses who testified, those  
04:36PM 23 150 or so exhibits, and all of that you consider in totality,  
04:37PM 24 and it comes together, layer upon layer upon layer, over two  
04:37PM 25 months, corroborating each other on the major points, those

04:37PM 1 elements that we've proven beyond a reasonable doubt.

04:37PM 2 And that's what we need to prove, are the elements,  
04:37PM 3 and each charge only has two or three. Not every little fact,  
04:37PM 4 not every little detail.

04:37PM 5 If I asked you what everybody wore yesterday, you'd  
04:37PM 6 probably have a bunch of different answers. But you'd know  
04:37PM 7 for damn sure you all sat in these chairs, right? The main  
04:37PM 8 point would be we had jury duty yesterday.

04:37PM 9 Facts plus law equals verdict. You heard it before.  
04:37PM 10 That's the formula. The facts come from the evidence in the  
04:37PM 11 courtroom.

04:37PM 12 Now the defense repeatedly invited you to speculate.  
04:37PM 13 You heard things like you can only imagine, you can only  
04:37PM 14 imagine, you can only imagine. Speculation, imagination, is  
04:38PM 15 not evidence. Not in this courtroom.

04:38PM 16 Rhetorical questions are not evidence. Suggestions  
04:38PM 17 about possibilities and sarcasm is not evidence.

04:38PM 18 It's possible that you're sitting right now in a  
04:38PM 19 rocketship to the moon, but the evidence is you're in a  
04:38PM 20 federal court building listening for the final time to an  
04:38PM 21 attorney talk to you.

04:38PM 22 The evidence is how you perform your duty, your  
04:38PM 23 function. You review the testimony, the exhibits, and you  
04:38PM 24 render a verdict based on that.

04:38PM 25 So every invitation you just heard beyond something

04:38PM 1 that was in this courtroom, or an exhibit you can see, reject  
04:38PM 2 it. Reject it. Those are invitations to speculate, nothing  
04:38PM 3 more, reject them.

04:38PM 4 Focus back on the evidence. Facts plus law equals  
04:38PM 5 verdict. That simple equation applied to the elements  
04:39PM 6 Mr. Cooper went through in detail that he's guilty, as sure as  
04:39PM 7 you're sitting in those chairs.

04:39PM 8 The proof doesn't need to be perfect. After all,  
04:39PM 9 people aren't perfect. Nobody is. Everyone's unique. Some  
04:39PM 10 are in different stages of their recovery. Some are handling  
04:39PM 11 the trauma in their life better than others. But based on  
04:39PM 12 their testimony and the boulders of it, the important parts of  
04:39PM 13 it, they corroborate each other and are corroborated by  
04:39PM 14 exhibits.

04:39PM 15 And that proof, when you look at it through the  
04:39PM 16 proper lens with your common sense and life experience, the  
04:39PM 17 proof's overwhelming. And it establishes each element of each  
04:39PM 18 crime that we need to prove beyond a reasonable doubt.

04:39PM 19 A last word about sort of the defendant's arguments  
04:39PM 20 in that regard. The defendant's arguments would be like  
04:39PM 21 having you be in a forest, and you know you've entered the  
04:39PM 22 forest, but instead of just knowing you're in the forest and  
04:39PM 23 calling it a forest, they would have you look to fixate on  
04:40PM 24 little flaws on each little tree, and not realize you're  
04:40PM 25 standing in a forest.

04:40PM 1           The evidence was all around you in this courtroom.

04:40PM 2 It's there for you, just like you'd be in the forest. It's  
04:40PM 3 obvious where you are, you're in a courtroom with facts that  
04:40PM 4 prove this defendant's guilt.

04:40PM 5           Okay. We can keep up Exhibit 555, Ms. Champoux, just  
04:40PM 6 keep it in the background.

04:40PM 7           Choices. The defendant's -- the defense started this  
04:40PM 8 way, they sort of ended this way. Choices. This case is  
04:40PM 9 about one person's choices, the defendant's.

04:40PM 10          To the extent you heard argument, though, about the  
04:40PM 11 different dancers' choices, other than the initial choice to  
04:40PM 12 go work at Pharaoh's, these were not choices. Very quickly  
04:40PM 13 after that, they became something much different.

04:40PM 14          This gets back to the business model the defendant  
04:41PM 15 set up. Once there, and once in the throes of addiction that  
04:41PM 16 he created like he did with L.L. and others, or he exacerbated  
04:41PM 17 like he did with G.R. and others, for those drug-addicted  
04:41PM 18 dancers, there became only the illusion of choice.

04:41PM 19          For the drug-addicted dancers that he either pumped  
04:41PM 20 up on drugs or helped keep malleable supplying them with  
04:41PM 21 drugs, there was no real choice. They weren't building their  
04:41PM 22 résumés to go function in society at that point. They were  
04:41PM 23 addicted to drugs, and he knew that.

04:41PM 24          A dancer operating under those severe addictions  
04:41PM 25 where they would do literally anything to avoid being sick,

04:41PM 1 lick the bottom of the toilet seat if requested, is no more  
04:41PM 2 able to make a rational and logical choice when it becomes --  
04:41PM 3 when it comes to a sex act or anything else important in their  
04:41PM 4 life than a child. That's what you're dealing with here.

04:42PM 5 As Rebecca Bender told you, and based on the other, I  
04:42PM 6 submit, powerful testimony you heard, the women who succumbed  
04:42PM 7 to the defendant and their business model: G.R., L.L., K.L.,  
04:42PM 8 P.H., A.A., K.A. and others -- they were operating under  
04:42PM 9 invisible chains.

04:42PM 10 The defendant and Pharaoh's were like a beacon for  
04:42PM 11 the drugs and the money they needed for the drugs. Because at  
04:42PM 12 that point, once his hooks were into them and that lifestyle  
04:42PM 13 were hooked into them, they couldn't do anything else. They  
04:42PM 14 couldn't function. And in that way, he and those working with  
04:42PM 15 him, that's how they overcome their will.

04:42PM 16 The whole thing was made to set up like Rebecca  
04:42PM 17 Bender educated you about. To position the dancers as the  
04:43PM 18 up-sellers. Because to the -- the customer, to the unwitting  
04:43PM 19 customer -- let's say the regular frat boy who walks in there  
04:43PM 20 one night, right, he's not doing anything wrong. To the  
04:43PM 21 regular customers, the dancer's doing these things.

04:43PM 22 But to the whales, the high-paying VIPs, the ones he  
04:43PM 23 really wanted to spend thousands and thousands of dollars like  
04:43PM 24 Wayne and Joseph Barsuk and those creeps, they knew the deal.  
04:43PM 25 And the deal was get your rocks off on these women in one way

04:43PM 1 or the other. And what's happening? They're there, that  
04:43PM 2 takes more time, that takes a longer dance, and ultimately  
04:43PM 3 with the split in the percentage, that's money in his pocket.  
04:43PM 4 It's how he ends up with a mansion, a Maserati, a Harley  
04:43PM 5 Davidson, a pool with a slide.

04:44PM 6 And then he's got the audacity to sue P.H. who can't  
04:44PM 7 rub two pennies together and is homeless living on the street.  
04:44PM 8 And then apparently, it's the government's fault for making  
04:44PM 9 sure she doesn't die and charging, her as you heard Brian  
04:44PM 10 Burns talk about doing. And then she messes up again because  
04:44PM 11 she can't get her life together. But she was 18 when she  
04:44PM 12 walked into his apartment and he gave her coke and a bottle of  
04:44PM 13 alcohol. Those are the facts from that witness stand.

04:44PM 14 So those up-selling dancers, they were his bank.  
04:44PM 15 Talk about coercion, control, exploitation?

04:44PM 16 Rebecca Bender explained most sex trafficking, like  
04:44PM 17 that which you saw in this trial, is hiding for you in plain  
04:44PM 18 sight.

04:44PM 19 The supposed gentleman's club, like Mr. Cooper said,  
04:45PM 20 was a brothel with a liquor license and a neon sign. So  
04:45PM 21 people like E.H., who stripped all over the country, still  
04:45PM 22 came back here offended by the fact that she got jizzed on and  
04:45PM 23 was told she can't call the police. She's no shrinking  
04:45PM 24 violet. She told you she worked in strip clubs in multiple  
04:45PM 25 states. Yet she was back here -- not bizarre, not bizarre,

04:45PM 1 offended and autistic. Team Don't Get Jizzed on and Not Call  
04:45PM 2 the Police.

04:45PM 3 His bouncers, were Team Grind on Them, because that's  
04:45PM 4 what he wanted, to keep these dancers dancing longer, making  
04:45PM 5 him more money.

04:45PM 6 So apply the facts plus the law, that will get you to  
04:45PM 7 the right verdict: Guilty.

04:45PM 8 You heard about CEO pimps and Romeo pimps. He  
04:46PM 9 bounced between the two. Just because he doesn't wear the  
04:46PM 10 floppy hat with the cane, nothing different than a pimp.  
04:46PM 11 That's what the evidence showed.

04:46PM 12 Talk about threat of severe harm, severe withdrawal?  
04:46PM 13 There's no doubt about that. None. Based on the drug  
04:46PM 14 addictions of these dancers you heard about.

04:46PM 15 Talk about threat of harm? He employed the leader of  
04:46PM 16 the Outlaws Motorcycle Club, first as your cleaner, then as  
04:46PM 17 your manager, and having others work there. Talk about threat  
04:46PM 18 of harm? That's coercion.

04:46PM 19 It's not just the drugs. It's the drugs; it's the  
04:46PM 20 Outlaws; it's him telling people he's in the mob; it's his  
04:46PM 21 family reputation; it's him pulling dancers off stage; it's  
04:46PM 22 him blackmailing dancers and telling them you won't be able to  
04:46PM 23 work anywhere else like he told L.L. when she, I'm sure as you  
04:46PM 24 know, based on your good judgment and common sense, mustered  
04:46PM 25 up enough courage to say I'll dance elsewhere, and he said no

04:47PM 1 you won't.

04:47PM 2 Do you know how hard that must have been for her,  
04:47PM 3 back then, to say that to him?

04:47PM 4 Control. Coercion. Domination. That's what he did.

04:47PM 5 The camera system? Let's dispense with that.

04:47PM 6 He knew he was under investigation since early 2019.

04:47PM 7 He was stopped. His brother was arrested and charged, he was  
04:47PM 8 stopped, his phone was seized. There's no camera footage  
04:47PM 9 before October 21st, 2019.

04:47PM 10 Maintaining a drug premises? Let me talk about minor  
04:47PM 11 inconsistencies for a moment. Minor inconsistencies between  
04:47PM 12 witnesses are the hallmark of truth. Nobody remembers  
04:47PM 13 something the same way. That goes back to describe your  
04:47PM 14 favorite play from the Bills game last week, you'll all  
04:47PM 15 describe it differently, you all saw the same play. And these  
04:48PM 16 dancers saw the same plays play out with their bodies over and  
04:48PM 17 over and over again.

04:48PM 18 They talked about maintaining a drug premises.

04:48PM 19 Listen to this, the judge closely. Permanently or temporarily  
04:48PM 20 from 2006 to 2019, he maintained Pharaoh's.

04:48PM 21 The fact that drug distribution was discreet from  
04:48PM 22 some customers, that's all that was discreet there, as R.W.  
04:48PM 23 explained to you.

04:48PM 24 The judge isn't gonna tell you that the drug use and  
04:48PM 25 distribution needed to be open and obvious at all times, just

04:48PM 1 that it was an important part of the business, important part  
04:48PM 2 of what was going on there. Mr. Cooper handled that.

04:48PM 3 And as to the conspiracy, there's two objects. Not  
04:48PM 4 just tied to Pharaoh's. You don't get to leave Pharaoh's and  
04:48PM 5 then go deal drugs at your house. He's charged with a  
04:48PM 6 narcotics conspiracy. He distributed drugs to Matt Albert in  
04:48PM 7 a parking lot at Donut Kraze. What was that?

04:49PM 8 That wasn't how the conspiracy works. There's stuff  
04:49PM 9 happening at Pharaoh's, but he's still a drug dealer when he  
04:49PM 10 walks out and sells to other people.

04:49PM 11 And there's still a conspiracy going on. Just  
04:49PM 12 because he has an ownership dispute in 2013, go to the direct  
04:49PM 13 examinations of the witnesses on that point. You see phone  
04:49PM 14 records. There were still phone calls in 2013. There's no  
04:49PM 15 actual evidence that you saw of any court order or anything  
04:49PM 16 like that that Peter Gerace wasn't supposed to be there.

04:49PM 17 And guess what? You're not supposed to sell drugs  
04:49PM 18 either. He did that anyway.

04:49PM 19 You're not supposed to use drugs on probation. He  
04:49PM 20 did that anyway.

04:49PM 21 So this notion that he wasn't supposed to be at  
04:49PM 22 Pharaoh's? Wrap your minds where that -- those words were  
04:49PM 23 first uttered in this courtroom. It wasn't from that witness  
04:49PM 24 stand, it was from this podium from an attorney.

04:49PM 25 Just because they got some people to say yeah, maybe,

04:49PM 1 I don't remember.

04:49PM 2 L.L. told you I don't ever remember a significant  
04:50PM 3 stretch where he wasn't there. I think she would know, as he  
04:50PM 4 had vaginal sex and stuck his penis in her mouth while holding  
04:50PM 5 drugs over her head. I think she would know. You know she  
04:50PM 6 would know.

04:50PM 7 Talk about credibility? P.H.? She owned what she  
04:50PM 8 said about the watch. The federal investigation wasn't about  
04:50PM 9 his stolen watch, members of the jury.

04:50PM 10 K.L. They didn't ask too much about the moment in  
04:50PM 11 time when he pulled his pants down. Did they ask her much  
04:50PM 12 about that? No. They wanted to ask her about all the other  
04:50PM 13 problems she had in life, problems that happened after he got  
04:50PM 14 her addicted to drugs.

04:50PM 15 They want to throw all that in K.L.'s face and trip  
04:50PM 16 her up a little bit? Sure.

04:50PM 17 But remember the moment when she couldn't even speak  
04:50PM 18 about when she was alone in the room with him. Do you think  
04:50PM 19 she's some actress, she just missed her calling? She just  
04:50PM 20 missed her Academy Award winning moment? Or was that trauma  
04:51PM 21 that you saw?

04:51PM 22 And it sucked for Mr. Cooper to have to ask her those  
04:51PM 23 questions. But I submit to you it was real, and you all saw  
04:51PM 24 it.

04:51PM 25 Katrina Nigro. I'll get to her in a moment.

04:51PM 1 L.L. Really? She's not credible? Her grand jury  
04:51PM 2 testimony was that she engaged in hundreds, a couple hundred  
04:51PM 3 sex acts. They're 25 men, a couple hundred sex acts. So she  
04:51PM 4 testifies about 500 sex acts here. There's your big  
04:51PM 5 inconsistency, guess we should all go home.

04:51PM 6 L.L., who talked for hours, about how different men  
04:51PM 7 all connected to this defendant in one way, shape, or form.  
04:51PM 8 His brother, his liquor distributor, abused her body, holding  
04:51PM 9 drugs over her head like training a dog to go to the bathroom  
04:51PM 10 outside.

04:51PM 11 That's an example Rebecca Bender gave you about how  
04:52PM 12 the drugs are used to control people. It's the exact same  
04:52PM 13 example she testified about, that's how L.L.'s life was.  
04:52PM 14 Making up anal sex and all that stuff? You know better.

04:52PM 15 Katrina Nigro. She's only the star witness -- I  
04:52PM 16 guess according to the defense, Katrina Nigro should be the  
04:52PM 17 only picture on 555. There's a lot of other stuff up there,  
04:52PM 18 there's a lot of other people, there's a lot of other  
04:52PM 19 exhibits, but guess what? Katrina Nigro, she's only a star  
04:52PM 20 witness in their minds. But in your minds, she's one witness  
04:52PM 21 who provided information for you to evaluate.

04:52PM 22 So, yes, was she corroborated? Jenny Carter  
04:52PM 23 corroborated her about the wedding, the fraudulent wedding.

04:52PM 24 The forged marriage certificate corroborated her when  
04:52PM 25 you compare Anthony Gerace's actual signature on his federal

04:52PM 1 plea agreement with the forgery on the marriage license.

04:52PM 2 The defendant's texts with Bongiovanni establish she  
04:52PM 3 was at that dinner where the envelope was handed over.

04:53PM 4 Phone records corroborate her.

04:53PM 5 Judge Michalski's emails to Fred Playtek -- you  
04:53PM 6 remember she told you Anthony was mad that his name was  
04:53PM 7 forged? Then Judge Michalski starts trying push through the  
04:53PM 8 pistol permit, let's make Anthony happy.

04:53PM 9 The contacts in the defendant's phone match the  
04:53PM 10 categories and people that she said went upstairs. She's  
04:53PM 11 Nostradamus now? She knows all the people in his phone? Or  
04:53PM 12 did she make relevant observations, admit to you that she  
04:53PM 13 walked some people up after the defendant would give her the  
04:53PM 14 key, including Judge Michalski, and then dancers had sex.

04:53PM 15 There's nothing -- there's nothing, I submit to you  
04:53PM 16 there's nothing novel about old men wanting to have sex with  
04:53PM 17 young women. And that's what he did. And he used drugs, and  
04:53PM 18 his position of power to do it for him and his buddies for the  
04:54PM 19 reasons Mr. Cooper told you about.

04:54PM 20 Let's talk more. The text message with Judge  
04:54PM 21 Michalski, let's get pussy. Talking about Shelby. Mocking  
04:54PM 22 Katrina. All corroborate things Katrina told you.

04:54PM 23 Anthony Casullo, a DEA agent testifying about a  
04:54PM 24 conversation with Bongiovanni about overdoses at Pharaoh's,  
04:54PM 25 corroborates Katrina.

04:54PM 1 Okay, so her estimate --

04:54PM 2 Pull up exhibit with Katrina, 241 or 240, whatever it

04:54PM 3 was, Ms. Champoux, I'm sorry, I've got like five minutes left.

04:54PM 4 -- all corroborate her, begrudgingly.

04:54PM 5 The other one, 240B. All right. We'll forget the

04:54PM 6 photos.

04:54PM 7 She was -- she was in Pharaoh's in 2014. She's in

04:54PM 8 pictures. Do you want to talk about a conspiracy? Scooter,

04:54PM 9 Darryl LaMont, would give drugs to L.L. when she couldn't

04:55PM 10 dance. Peter made sure L.L. was able to dance because she was

04:55PM 11 a favorite who made him a lot of money.

04:55PM 12 A picture speaks a thousand words. That's a picture

04:55PM 13 of a conspiracy.

04:55PM 14 It didn't end there. LaMont provided multiple

04:55PM 15 services, drugs to dancers, and then they shared personnel.

04:55PM 16 So much so that LaMont knows which of this defendant's dancers

04:55PM 17 do anal. Hahaha. I guess it's a joke.

04:55PM 18 Nothing funny about that joke, and you all know it,

04:55PM 19 because it's not a joke.

04:55PM 20 Who else talked about dancers overdosing? R.W.,

04:55PM 21 E.H., L.L. overdosed herself, K.M.

04:55PM 22 K.M. coming back from Pennsylvania, no stake in this

04:55PM 23 case, tells you the defendant admits the bikers got rid of a

04:55PM 24 body. He doesn't know what they did with it.

04:56PM 25 I'm gonna skip ahead a little bit. I'm going to have

04:56PM 1 a few minutes to go.

04:56PM 2 The defendant doesn't have to know about each  
04:56PM 3 transaction of drugs at Pharaoh's, it was his business model.  
04:56PM 4 You heard about it. Marcus Black, A.A., Cherry, all of those  
04:56PM 5 people working, putting drugs in people's hands, he did it  
04:56PM 6 himself.

04:56PM 7 But guess what? The CEO of McDonald's doesn't have  
04:56PM 8 to watch people flip burgers, he knows they're being flipped,  
04:56PM 9 'cuz it's part of the business. It's part of the business  
04:56PM 10 that makes the CEO money. That's this defendant.

04:56PM 11 The defendant would have you believe he wasn't there  
04:56PM 12 in 2013. There's zero evidence of that. No evidence that he  
04:56PM 13 wasn't allowed in the club. No evidence of a court order. No  
04:56PM 14 evidence where hypothetically he starts to care about the law  
04:56PM 15 and doesn't show up.

04:56PM 16 But once Don Parrino was fully out of the picture, it  
04:56PM 17 revved up more. Bring in the Outlaws, let's ramp it up more.  
04:57PM 18 More drug trafficking, more sex trafficking.

04:57PM 19 And that gap in time that Mr. Foti is talking about,  
04:57PM 20 there's zero significance to that. The judge is going to  
04:57PM 21 instruct you on the law. It's on or about the dates charged  
04:57PM 22 in the indictment. So if someone lays low and doesn't sell  
04:57PM 23 drugs for a little while, they're not out of the conspiracy.  
04:57PM 24 But you have no evidence that this defendant never stopped,  
04:57PM 25 only words from this podium, not that witness stand.

04:57PM 1 L.L. versus A.A. In the last minute or so that I  
04:57PM 2 have, the defense highlighted for you their differences in  
04:57PM 3 their testimony. Well, guess what? I submit to you that L.L.  
04:57PM 4 is further along in her healing, that she is more willing to  
04:57PM 5 talk about her traumatic experiences.

04:57PM 6 A.A. couldn't even look at a photo of Wayne VanVleet.  
04:57PM 7 L.L. was able to look at him and identify him.

04:57PM 8 Don't hold it against A.A. that she didn't fully  
04:58PM 9 disclose all of her trauma before you like L.L. was, or like  
04:58PM 10 G.R. was. But you should believe the parts that she told you,  
04:58PM 11 that she mustered the courage to tell you about.

04:58PM 12 Last thing. They talked to you about missing  
04:58PM 13 witnesses, other people who were interviewed. Well, guess  
04:58PM 14 what? Those were just more invitations to speculate. Reject  
04:58PM 15 it.

04:58PM 16 It's our burden of proof, our burden to prove the  
04:58PM 17 case beyond a reasonable doubt. We embrace that burden. But  
04:58PM 18 the defendant has the ability and the right to subpoena  
04:58PM 19 witnesses, so that's just simply not evidence in the case. So  
04:58PM 20 to the extent they want you to speculate? Reject it.

04:58PM 21 All right. I'm wrapping it up. I have 45 seconds to  
04:58PM 22 go. So here we are. I've got a whole bunch more to say, but  
04:59PM 23 I can't say it in that amount of time, so your good judgment,  
04:59PM 24 your common sense, your recollections are gonna fill in the  
04:59PM 25 gaps of the arguments that I want to make.

04:59PM 1                   The last thing I'll say is this: Their faces and  
04:59PM 2 their experiences were all unique, yet horribly similar. He  
04:59PM 3 started them down the path to destruction, the one he  
04:59PM 4 exploited, the business model he chose, the choices he made,  
04:59PM 5 while he was protected by a corrupt federal agent, and when  
04:59PM 6 that didn't work anymore he tried to tamper with witnesses.

04:59PM 7                   The evidence is overwhelming. There is no reasonable  
04:59PM 8 doubt in this case on the elements we have to prove. Any  
04:59PM 9 doubts you would have would be unreasonable based on the  
04:59PM 10 overwhelming evidence that you heard.

04:59PM 11                  His choices for over 20 years made him guilty. So  
04:59PM 12 facts, plus law, equals verdict. He is guilty of every single  
04:59PM 13 count, as sure as you're sitting in those chairs.

05:00PM 14                  Thank you for your time and attention. Sorry I spoke  
05:00PM 15 so fast at the end there. Thank you.

05:00PM 16                  **THE COURT:** Okay. So we are now done for the day.

05:00PM 17                  I want you to remember my instructions about not  
05:00PM 18 communicating about the case in any way with anyone including  
05:00PM 19 each other. Don't use tools of technology to try to learn  
05:00PM 20 anything about the case or to communicate about the case.

05:00PM 21                  Don't read, or listen to, or watch any news coverage,  
05:00PM 22 if there is any, while the trial's in progress. And don't  
05:00PM 23 make up your mind just yet.

05:00PM 24                  Tomorrow morning, 9:00 sharp. I'm going to start  
05:00PM 25 instructing you. It's going to be a long set of instructions,

05:00PM 1 two to three hours. You've got to listen to me for two to  
05:00PM 2 three hours. It's hard, I know that. It's hard for me to  
05:00PM 3 read it. And I'm not going to be making much eye contact with  
05:00PM 4 you because I'm going to be reading because it's so important  
05:00PM 5 that I get the law right. So come prepared to listen to me  
05:00PM 6 and to pay attention to me, because it's important that you  
05:01PM 7 pay attention to what law is. That's -- that's the heart of  
05:01PM 8 what you have to understand so that you can make factual  
05:01PM 9 decisions and apply the law that I give you to those facts  
05:01PM 10 that you find. Okay?

05:01PM 11 So get a very good night sleep tonight. Drive  
05:01PM 12 carefully. Be here at 9:00 sharp.

05:01PM 13 I want to start right at 9:00 because there's at  
05:01PM 14 least one juror who wants to be out of here by 12:30, and I  
05:01PM 15 want you to at least be able to go back into the jury room and  
05:01PM 16 pick a foreperson, and do the preliminary kinds of things that  
05:01PM 17 you have to do before you break for the day tomorrow, and then  
05:01PM 18 come back on Monday. Okay?

05:01PM 19 So thank you all very, very much. We'll see you  
05:01PM 20 tomorrow morning at 9:00.

05:01PM 21 **JUROR:** Will those be moved tomorrow?

05:01PM 22 **THE COURT:** I hope so.

05:01PM 23 **JUROR:** I can't see you.

05:02PM 24 **THE COURT:** That's a good thing for you that you  
05:02PM 25 can't see me.

05:02PM 1           **MR. TRIPI:** Sorry about that.

05:02PM 2           (Jury excused at 5:02 p.m.)

05:02PM 3           **THE COURT:** Okay. Before I talk about the charge  
05:02PM 4 very briefly, anything for the record from the defense?

05:02PM 5           **MR. SOEHNLEIN:** No, thank you, Judge.

05:02PM 6           **MR. FOTI:** No.

05:02PM 7           **THE COURT:** Okay. Anything from the government?

05:02PM 8           **MR. TRIPI:** No, thank you, Judge.

05:02PM 9           Oops, sorry, go ahead, Mr. Cooper.

05:02PM 10          **MR. COOPER:** Just a reminder. I spoke with the  
05:02PM 11 defense about marking that newspaper exhibit that was shown to  
05:02PM 12 Ben Rivera, we still need to do that.

05:02PM 13          **THE COURT:** Okay. So, let's -- let's talk about the  
05:02PM 14 three -- I think the three issues that are remaining.

05:02PM 15          First of all, I have thought long and hard,  
05:02PM 16 Mr. Cooper, about including something about the addiction and  
05:02PM 17 that being sufficient to -- to show overcoming will and  
05:03PM 18 coercion and I'm not going to do it. I think it's a mistake,  
05:03PM 19 I think that it is singling out evidence. I think that would  
05:03PM 20 be unfair to the defendant, and I'm not going to do that.

05:03PM 21          You made a fine argument on that. The defense did  
05:03PM 22 not really contest that, and I just don't think it's the right  
05:03PM 23 thing to do.

05:03PM 24          And I -- I thought about it, I thought about it lots  
05:03PM 25 of different ways. I told you I would, and I have, and I'm

05:03PM 1 not going to do it.

05:03PM 2 Number 2, with respect to the buyer/seller charge,  
05:03PM 3 the requested buyer/seller charge, and with respect to the  
05:03PM 4 gratuities versus bribe charge, I've given you proposals that  
05:03PM 5 are going to make neither side happy.

05:03PM 6 What I'm going to do is -- what I'm inclined to do,  
05:03PM 7 and I'll listen to what you folks have to say, is to include  
05:03PM 8 one statement, one sentence about buyer/seller that I think is  
05:03PM 9 an accurate statement of the law, and that I think is the only  
05:03PM 10 way that buyer/seller -- I mean, all the jury needs to know is  
05:04PM 11 that a sale is not a conspiracy. And so I think they can be  
05:04PM 12 told that.

05:04PM 13 But the rest of the stuff -- and I'm willing to  
05:04PM 14 listen to the defense argue to me that the rest of the stuff  
05:04PM 15 should come in, but the stuff about the length of time of the  
05:04PM 16 relationship existed, and the amount of drugs that were  
05:04PM 17 exchanged, there's no one sale here. And so it's -- it's  
05:04PM 18 hard.

05:04PM 19 This is not a situation where the proof came in that  
05:04PM 20 Joe Smith was the supplier and John Brown was the middleman  
05:04PM 21 and sold drugs to somebody else. Where that might, you know,  
05:04PM 22 could be a buyer/seller. But -- but that's not what we have  
05:04PM 23 here.

05:04PM 24 So I think including that one sentence is sufficient.  
05:04PM 25 And I'll hear from the government why that one sentence

05:04PM 1 shouldn't be included, but I think that that's what I'm  
05:04PM 2 inclined to do.

05:04PM 3 And then with respect to the -- the distinction  
05:05PM 4 between bribes and gratuities, same sort of thing. I'm going  
05:05PM 5 to give a one-sentence statement when I talk about what a  
05:05PM 6 bribe is, and -- and that it doesn't have to be a, you know,  
05:05PM 7 perfect quid pro quo, I'm giving you this to do that. It can  
05:05PM 8 be for a stream of benefits sort of thing.

05:05PM 9 I am going to say -- I'm inclined to say, I -- I  
05:05PM 10 haven't decided 100 percent, but I'm inclined to say that a  
05:05PM 11 payment for something that somebody already did is not a  
05:05PM 12 bribe. I think that's -- that's the law. I took the quote  
05:05PM 13 from the Supreme Court decision, and that's what I'm inclined  
05:05PM 14 to do. I'm not inclined to give anything more on that.

05:05PM 15 **MR. TRIPI:** Can I be heard on that one first, Judge?

05:05PM 16 **THE COURT:** Pardon me?

05:05PM 17 **MR. TRIPI:** Can I be heard on that one first?

05:05PM 18 **THE COURT:** Sure, yeah. We're going to do this  
05:05PM 19 tomorrow morning.

05:05PM 20 **MR. TRIPI:** Oh, okay, my fault.

05:05PM 21 **THE COURT:** Yeah, no, we're going to do this tomorrow  
05:05PM 22 morning. I just wanted to lay this out now so that  
05:05PM 23 Mr. Soehnlein can have an opportunity to weigh in to -- with  
05:06PM 24 Mr. Foti, and then Mr. Foti -- so I want you folks here at  
05:06PM 25 8:30 tomorrow --

05:06PM 1           **MR. TRIPI:** Okay.

05:06PM 2           **THE COURT:** -- and we will vet these at 8:30

05:06PM 3 tomorrow, okay?

05:06PM 4           **MR. SOEHNLEIN:** Thank you, Judge.

05:06PM 5           **MR. TRIPI:** That sounds a lot better than now. Thank

05:06PM 6 you.

05:06PM 7           **THE COURT:** Yeah, I -- I didn't want to do that to

05:06PM 8 you, Mr. Tripi, because I know you're exhausted, Mr. Cooper,

05:06PM 9 is exhausted, Mr. Foti is exhausted, Mr. Soehnlein is

05:06PM 10 exhausted I'm sure, and I'm a little tired myself. So let's

05:06PM 11 do it tomorrow at 8:30. Okay?

05:06PM 12           **MR. SOEHNLEIN:** And, Judge, tomorrow when I'm gone,

05:06PM 13 will you just give a similar statement to the jury like you

05:06PM 14 did for Ms. Chalbeck?

05:06PM 15           **THE COURT:** I will, absolutely.

05:06PM 16           **MR. SOEHNLEIN:** Thank you, I appreciate it.

05:06PM 17           **THE COURT:** Yep, absolutely.

05:06PM 18           Okay. Anything else from the government?

05:06PM 19           **MR. COOPER:** No.

05:06PM 20           **MR. TRIPI:** Nothing else. I just want to say to the

05:06PM 21 defense team, good job. That's it.

05:06PM 22           **THE COURT:** Anything else from the defense?

05:06PM 23           **MR. SOEHNLEIN:** No, thank you, Judge.

05:06PM 24           **THE COURT:** Okay. Terrific. Thank you all very

05:06PM 25 much. See you tomorrow morning.

05:06PM

1                   **THE CLERK:** All rise.

05:06PM

2                   (Proceedings concluded at 5:06 p.m.)

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**CERTIFICATE OF REPORTER**

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10                  In accordance with 28, U.S.C., 753(b), I  
11 certify that these original notes are a true and correct  
12 record of proceedings in the United States District Court for  
13 the Western District of New York on December 19, 2024.

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15

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s/ Ann M. Sawyer

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Ann M. Sawyer, FCRR, RPR, CRR  
Official Court Reporter  
U.S.D.C., W.D.N.Y.

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